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TRANSCRIPT OF RECORD

G. W. Smith

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 227

LUCY WARD STEBBINS AND FRANK J. HURLEY, AS EXECUTRIX AND EXECUTOR OF THE WILL OF HENRIETTA PIERCE WATKINSON, DECEASED, PLAINTIFFS IN ERROR,

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED NOVEMBER 26, 1923

(29,973)

Immermann v State 10 H. M.

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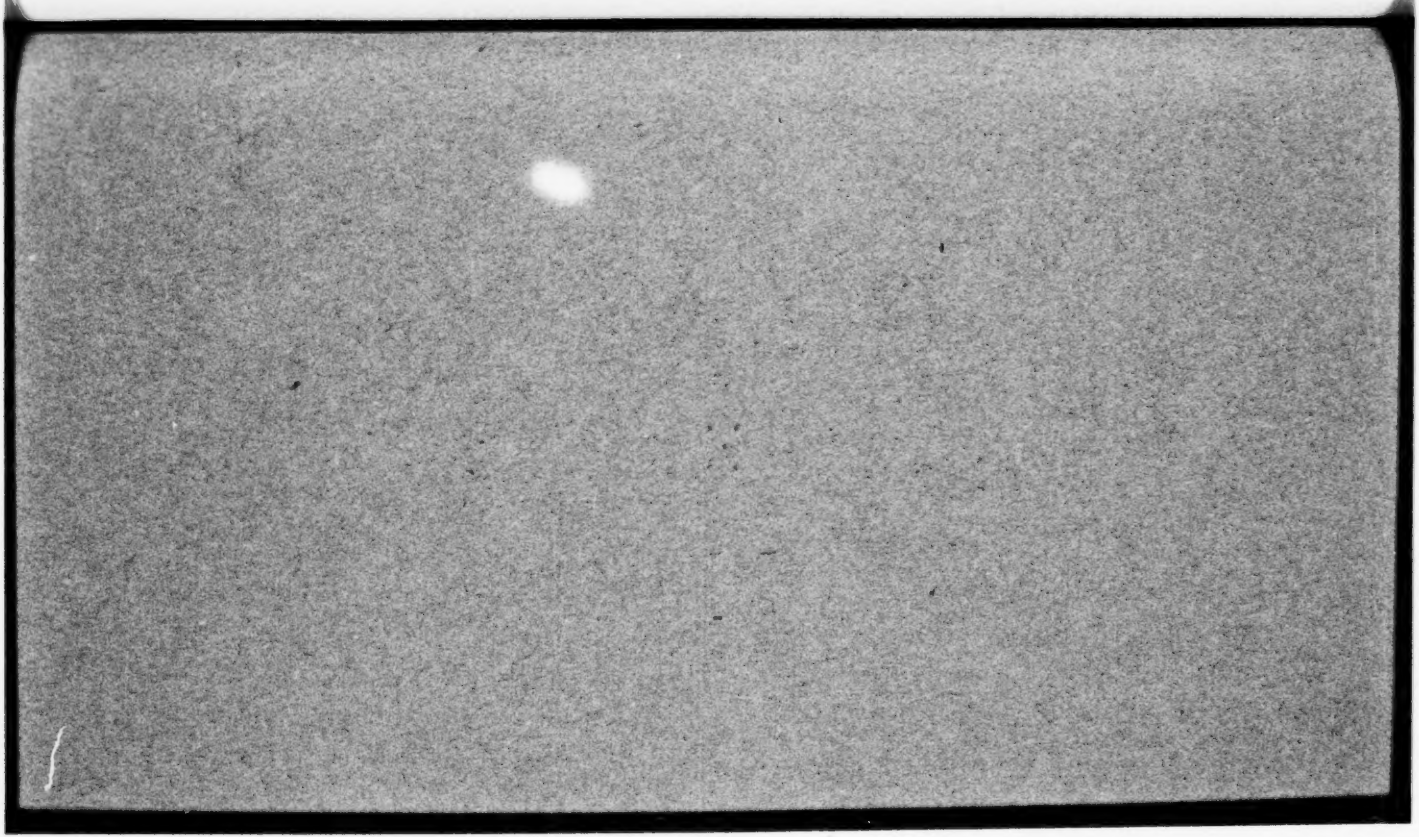

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[fol. 1] **IN SUPREME COURT OF CALIFORNIA**

CAPTION—Omitted

[fol. 2] In the Superior Court of the State of California in and for the City and County of San Francisco, Department No. 9. (Probate.)

No. 30075

In the Matter of the Estate of HENRIETTA PIERCE WATKINSON, Deceased

ORDER MODIFYING AND CONFIRMING REPORT OF INHERITANCE TAX APPRAISER—Filed April 29, 1921

William A. Breen, Esq., one of the duly appointed, qualified and acting inheritance tax appraisers of the City and County of San Francisco, State of California, and the inheritance tax appraiser heretofore duly designated and appointed in the matter of the above entitled estate, having on the 28th day of January, A. D. 1921, presented to this Court and filed herein his report as such appraiser;

And Lucy Ward Stebbins and Frank J. Hurley, the executrix and executor of the will of said deceased, having on the 18th day of March, A. D. 1921, and within due time, filed in this Court objections in writing to the said report; and this Court having thereupon duly made its order fixing the 4th day of April, A. D. 1921, at ten [fol. 3] o'clock A. M. of that day, and the courtroom of Department No. 9 (Probate) of this Court, as the time and place for the hearing of said objections;

And on this, the 25th day of April, A. D. 1921, the said report and the said objections thereto, coming regularly on for hearing pursuant to continuances duly and regularly ordered and had from the said 4th day of April, A. D. 1921; Edward C. Harrison, Esq., appearing for the said executrix and executor, and A. W. Brouillet, Esq., appearing on behalf of the State Controller of the State of California and the County Treasurer of the City and County of San Francisco, and being heard in response to said objections;

And due proof having been made to the satisfaction of the Court that notice of such hearing had been given in all respects as required by law and the aforesaid order of this Court;

And the Court having heard and duly considered the evidence adduced upon the issues of fact raised by said objections and finding therefrom:

That said appraiser has included among the deductions made by him from the gross value of said estate, the item of Federal Income Tax for 1920, estimated up to the date of said decedent's death, at the sum of $950.00 only; whereas the same has been computed and [fol. 4] accurately fixed and determined at the sum of $47,409.53,

a difference of $46,459.53, to the extent of which difference the net valuation of said estate, as shown by said report, is excessive, and that the taxes, therefore, stated in said report, are excessive to the extent of $9,457.39, and should be reduced by that sum, and such reduction apportioned amongst the residuary devisees and legatees under said will, as is hereinafter ordered and specified in detail.

That said executix and executor have been required and compelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate to the United States, as and for the Federal estate tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, neither the whole nor any part of which is deducted by said appraiser in arriving at the net value of said estate, subject to inheritance tax.

And this Court being of the opinion, and finding further, that said report should be modified by the reduction of the net valuation of said estate to the extent of said sum of $46,459.53 and the taxes thereby shown, reduced to the extent of said sum of $9,457.39, apportioned as hereinafter set forth and specified in detail; and that [fol. 5] the said report should be otherwise confirmed and said objections thereto overruled.

It is hereby ordered, adjudged and decreed that said report of said inheritance tax appraiser be and the same is hereby modified by the deduction from the clear market value of the estate as thereby shown, of the said sum of $46,459.53, and the consequent reduction of such clear market value to $1,756,695.47; and that the taxes thereby shown upon the interests hereinafter specified passing under said will, are corrected and reduced to the figures hereinafter specified as follows—that is to say:

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Constance Heeley, stranger:		$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 " 10%..	2,500.00
Money.....	$25,000.00	50,000.00 " 15%..	7,500.00
1/7 Residue ...	162,335.78	87,335.78 " 20%..	17,467.16
	$187,335.78		$28,692.16
[fol. 6] Mrs. Venour Vincent, stranger:		$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 " 10%..	2,500.00
Money.....	$10,000.00	50,000.00 " 15%..	7,500.00
Watch	50.00	72,335.78 " 20%..	14,477.16
1/7 Residue ...	162,335.78		
	$172,385.78		$25,702.16

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Miss Gladys Heeley, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
Money	$10,000.00	72,335.78 " 20% ..	14,467.16
1/7 Residue ...	162,335.78		
	$172,335.78		$25,692.16
William L. Cousins, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
		100,000.00 " 20% ..	20,000.00
596 shs. H. & W. Pierce Co. ...	$119,200.00	89,714.78 " 25% ..	22,428.70
100 shs. Crown-Willamette Paper Co.	8,000.00		
Watch	15.00		$53,653.70
Chattels.....	164.00		
1/7 Residue ...	162,335.78		
	$289,714.78		
[fol. 7] William P. Johnson, cousin:		$1,000.00	
		24,000.00 at 4% ..	$960.00
		25,000.00 " 8% ..	2,000.00
		50,000.00 " 10% ..	5,000.00
		100,000.00 " 15% ..	15,000.00
596 shs. H. & W. Pierce Co. ...	$119,200.00	89,545.78 " 20% ..	17,909.16
100 shs. Crown-Willamette Paper Co.	8,000.00		
Watch chain ..	10.00		$40,869.16
1/7 Residue ...	162,335.78		
	$289,545.78		
Lucy Ward Stebbins, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
Money	$5,000.00	81,137.13 " 20% ..	16,227.43
Jewelry	8,502.55		
Furs	1,622.50		$27,452.43
Laces	175.00		
Silver, etc.	300.00		
Chattels.....	3,201.30		
1/7 Residue ...	162,335.78		
	$181,137.13		

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
[fol. 8] H. C. McNally, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
Money	$15,000.00	50,000.00 " 15% ..	7,500.00
100 shs. Crown-Willamette Paper Co.	8,000.00	13,419.20 " 20% ..	2,683.84
			$13,908.84
Automobile	5,000.00		
Ring	750.00		
Silver	300.00		
Chattels	3,201.30		
1/14 Residue ..	81,167.90		
	$113,419.20		
Frank J. Hurley:		$500.00	
Money	$5,000.00	24,500.00 at 5% ..	$1,225.00
Oakland land ..	9,000.00	25,090.00 " 10% ..	2,500.00
1/14 Residue ..	81,167.90	45,167.90 " 15% ..	6,775.19
	$95,167.90		$10,500.19

And that the total amount of inheritance taxes payable from said estate is the sum of $238,639.74 only.

And it is further ordered, adjudged and decreed that, as hereinbefore modified, the said report of said Inheritance Tax Appraiser be, and the same is hereby, confirmed and approved, and the inheritance taxes payable from said estate ascertained, determined and fixed as therein and thereby stated, excepting only as the same are [fol. 9] modified by the figures hereinbefore stated; and that the said objections to said report be, and they are hereby disallowed and overruled except so far as concerns the corrections hereby and hereinbefore made therein.

Done in Open Court this 25th day of April, A. D. 1921.

Frank H. Dunne, Judge.

Approved as to computations and form.
A. W. Brouillet, Asst. Inheritance Tax Attorney.

[File endorsement omitted.]

[fol. 10] IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

Executors' Bill of Exceptions to Order Modifying and Confirming Report of Inheritance Tax Appraiser—Filed April 29, 1921

Be it remembered that William A. Breen, Esq., one of the duly appointed, qualified and acting inheritance tax appraisers of the City and County of San Francisco, State of California, and the inheritance tax appraiser duly designated and appointed by the above named Superior Court in the matter of the above entitled estate, presented to said Superior Court and filed herein, on the 28th day of January, A. D. 1921, his report as such appraiser, and that the following constitutes and is a copy of said report as so presented and filed:

[fol. 11] REPORT OF INHERITANCE TAX APPRAISER

Date of Death: August 7th, 1920.
Amount of Tax: $248,097.13.

To the Honorable the Superior Court of the State of California in and for the City and County of San Francisco:

William A. Breen, one of the duly appointed, qualified and acting inheritance tax appraisers for the City and County of San Francisco, State of California, and the inheritance tax appraiser in the above entitled estate, hereby reports to the Court, after due and regular hearing had and appraisement made, as follows:

That Henrietta Pierce Watkinson died testate on the 7th day of August, 1920, a resident of San Francisco, California, and left property taxable under the inheritance tax laws of the State of California in the above entitled proceedings; which property is more particularly described in the inventory and appraisement on file herein, which said inventory and appraisement is hereby referred to and made a part hereof.

[fol. 12] That at the date of death of said decedent the fair market value of the property of said estate was the sum of $1,807,627.40, as shown by said inventory and appraisement.

The following are the items of said property and the valuations thereof:

Cash in office	$161.21
Balance of deposit with the Bank of California National Association	5,601.13
Balance of deposit with Central National Bank of Oakland	163.91
Balance of deposit with Bank of Laidlaw & Co., New York	289,034.85
Balance of deposit with Shawmut National Bank, Boston, Mass.	188,595.91

Rents, interests and dividends collected since decedent's death	4,877.33
12 shares capital stock of Associated Oil Co., at	1,011.00
204 shares capital stock of the Bank of California National Association	39,780.00
200 shares capital stock of Central Savings Bank of Oakland	22,000.00
100 shares of the capital stock of Central National Bank of Oakland	20,000.00
1,547 shares of the capital stock of Crown Willamette Paper Company, Series A First Preferred	123,760.00
[fol. 13] 3,454 shares of the capital stock of Crown Willamette Paper Company, Series B First Preferred	259,050.00
1,228 shares of the capital stock of Crown Willamette Paper Company, Second Preferred	79,820.00
2,932 shares of the capital stock of The Golden Eagle Mining Company	No value
40 shares of the capital stock of Lebanon Paper Co.	No value
50 shares of the capital stock of Oakland Traction Company	150.00
1,277 shares of H. & W. Pierce, Incorporated	255,400.00
763 shares of the capital stock of Powell River Company, Ltd.	76,300.00
527 shares of the common capital stock of Willamette Pulp and Paper Company	13,175.00
2,590½ shares of the common capital stock, 2,590½ shares of the capital stock Series B First Preferred, and 2,590½ shares of the common capital stock of the Willamette Pulp and Paper Company.	79,787.40
[fol. 14] 26,000 shares of the capital stock of California Mother Lode Mining Company	No value
6,000 shares of the capital stock of San Marcos Mining Company	No Value

All that certain lot of land situated in the City and County of San Francisco, State of California, bounded and particularly described as follows, to-wit:

Beginning at a point in the southeasterly line of San Jose Avenue, distant thereon ninety-eight (98) feet and ten (10) inches southwesterly from the southwesterly line of Liebig Street; running thence southwestly along said southeasterly line of San Jose Avenue one hundred and thirty-seven (137) feet and seven and four-tenths (7.4) inches; thence at an angle of ninety degrees (90°) fifty-two and one-half (52½) minutes southeasterly one hundred and eighty-three (183) feet and nine (9) inches; thence southwesterly and parallel with said southeasterly line of San Jose Avenue one hundred and thirty-seven (137) feet and seven and four-tenths (7.4)

inches to a stake; thence at right angles southeasterly one hundred and seventy (170) feet to a [fol. 15] point in the northwesterly line of Wyoming Avenue; thence northeasterly along said northwesterly line of Wyoming Avenue two hundred and seventy-five (275) feet and one and four-tenths (1.4) inches; and thence at an angle of eighty-eight degrees (88°) northwesterly three hundred and sixty-seven (367) feet and six (6) inches to said southeasterly line of San Jose Avenue at the point of beginning, being lots Nos. Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10) 3,000.00

The following described real property situated in the City of Oakland, State of California:

1. Beginning at the southwesterly corner of Twenty-eighth (formerly Merrimac Place) and Webster Streets, running thence southerly along the westerly line of Webster Street sixty-eight and one-half (68½) feet; thence at a right angle westerly one hundred and ninety-nine and six-tenths (199.6) feet; thence north sixty-eight and one-half (68½) feet to a point in the southerly line of Twenty-eighth Street distant thereon one hundred and ninety-eight and thirty-three hundredths (198.33) feet westerly from the point of beginning; and thence easterly [fol. 16] along said southerly line of Twenty-eighth Street one hundred and ninety-eight and thirty-three hundredths (198.33) feet to its intersection with said westerly line of Webster Street at the point of beginning 8,500.00

2. Beginning at a point on the westerly line of Webster Street, distant thereon sixty-eight and one-half (68½) feet southerly from the southerly line of Twenty-eighth Street formerly Merrimac Place); running thence southerly along said Westerly line of Webster Street seventy-six (76) feet; thence westerly and parallel with the said southerly line of Twenty-eighth Street one hundred and ninety-nine and fifteen hundredths (199.15) feet; thence northerly seventy-six feet to a point which is distant one hundred and ninety-eight and two-thirds (198 2/3) feet westerly from the point of beginning measured on a line parallel with said southerly line of Twenty-eighth Street; and thence easterly one hundred and ninety-eight and two-thirds (198 2/3) feet to said westerly line of Webster Street at the point of beginning; together with the improvements thereon 9,000.00

[fol. 17] All those certain lots of land situated in the said County of San Mateo, State of California, known, designated and particularly described and as the same are laid down and delineated and so designated upon the certain map entitled "Map of Mission Tract in San Mateo County, Cal.," which said map was filed for record on the 21st day of January, A. D. 1907, in the office of the County Recorder of said County of San Mateo, and is now of record therein in Book D of Maps at page 50, and also in Book 4 of Maps at page 51, to-wit:

1. Lots Numbered 40 and 41, in Block "A".....	500.00
2. Lots Numbered 45, 46, 61, 67, 68 and 73 in Block "C".....	1,500.00
3. Lot Numbered 27, in Block "D".....	250.00
4. Lot Numbered 60, in Block "C," subject to a contract under the terms of which the holder thereof will be entitled to a conveyance upon the payment of a balance of $225.00.....	225.00

All that certain tract or parcel of land situated in the County of San Mateo, State of California, bounded and described as follows, to-wit:

[fol. 18] Beginning at a point in the center of the County Roal leading from San Francisco to San Jose, which point is the southeasterly corner of the tract of land containing four hundred and thirteen and nine hundredths (413.09) acres, now or formerly belonging to W. T. Coleman; running thence south thirty and one-half (30½) degrees along the center of said road nineteen and thirty hundreths (19.30) chains to the northeasterly corner of a tract of land containing one thousand two hundred and sixty-nine and thirty-seven hundredths (1,269.37) acres, now or formerly belonging to Cabannes & DuPuy; thence leaving the said road and running along the line of Cabannes & DuPuy tract south fifty and one-half degrees (50½°) west fifty-three and ninety hundredths (53.90) chains; thence north forty-one and one-half degrees (41½°) west twenty-seven and seventy-three hundredths (27.73) chains to the said Coleman tract; and thence along the line of said Coleman tract north fifty-eight and three-fourths degrees (58¾°) east fifty-eight and seventy hundredths (58.70) chains to the point of beginning, [fol. 19] containing one hundred and thirty-one and eight-hundredths (131.08) acres and being a portion of Buri Buri Rancho..... 52,400.00

All those certain lots or parcels of land situated in the County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down and delineated and so designated on that certain map entitled "Map of Tolenas Farms," filed in the office of the County Recorder of said County of Solano, State of California, on the 23rd day of July, A. D. 1912, and of record therein in Liber 4 of Maps, at page 29, to-wit:

1. Lots numbered 96, 97, 98 and 102..... 1,000.00
2. Lots numbered 1 and 2 subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 516.50
3. Lot numbered 3, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 115.80

[fol. 20] 4. Lots numbered 7, 8 and 9, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 593.00

5. Lot numbered 12, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 260.00
6. Lots numbered 14 and 15, subject to a contract of of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —,——, at 6% per annum..... 160.00
7. Lots numbered 22 and 23, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 95.00
8. Lot numbered 27, subject to a contract of sale thereof, under which the vendee and his assigns [fol. 21] will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 77.50
9. Lot numbered 34, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——— at 6% per annum..... 202.00

10. Lots numbered 55 and 56, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per cent annum..... 425.50

11. Lots numbered 60 and 61, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 397.50

12. Lot numbered 75, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, [fol. 22] at 6% per annum..... 323.50

13. Lot numbered 76, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 100.50

All those certain lots or parcels situated in the said County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Locke-Paddon Colony No. 5," filed for record in the office of the County Recorder of said Solano County on December 6th, 1912, and of record therein in Liber 4 of Maps at page 17, to-wit:

1. Loth numbered 11, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 28.93

[fol. 23] 2. Lot numbered 12, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 83.36

3. Lot numbered 13, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 88.36

4. Lot numbered 14, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 88.36

5. Lot numbered 17, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 185.00

6. Lot numbered 20, subject to a contract of sale [fol. 24] thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —,——, at 6% per annum..... 82.40

7. Lot numbered 21, subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 18.60

All those certain lots or parcels of land situated in the County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Locke-Paddon Colony No. 7," filed for record in the office of the County Recorder of said Solano County on February 15th, 1913, and of record therein in Liber 4 of Maps, at page 18, to-wit:

Lots 9, 10, 14, 15, 17, 18, 23 and 24, subject to a contract with William and Charles L. Paddon under [fol. 25] which they will be entitled to a conveyance thereof upon their payment of a balance of $1,600.00 1,600.00

All those certain lots or parcels of land situated in the County of San Joaquin, State of California, known, designated and particularly described as follows, as the said are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Small Farms Improvement Tract Divisions H. J. K. L.," filed for record in the office of the County Recorder of said San Joaquin County on December 9th, 1912, and of record therein in Voume 6 of Official Maps and Plats at page 22, to-wit:

1. Lots numbered 25-26J, 27-28J, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 333.10

2. Lots numbered 5-6K, subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, [fol. 26] ——, at 6% per annum..... 158.55

All one equal undivided one-third part (1/3) of all those certain tracts or parcels of land situated in the County of Kern, State of California, bounded and particularly described as follows, to-wit:

First. The Southwest quarter (S. W. ¼) of the Southeast quarter (S. E. ¼), and the Southeast quarter (S. E. ¼) of the Southwest quarter (S. W. ¼) of Section Sixteen (16) in Township 31 South, Range 22 East, Mount Diablo Base and Meridian; containing 80 acres..... 1,000.00

Second. The South half (S. ½) of the South half (S. ½) of the Southwest quarter (S. W. ¼) of Section Sixteen (16), Township 29 South, Range 21 East, Mount Diablo Base and Meridian; containing 40 acres 300.00

Promissory notes and accounts receivable:

Note of J. D. Ackerman dated April 15th, 1917, for $430.31 payable 90 days after its date with interest at 8% per annum; secured by five shares of Oakland [fol. 27] Traction Co. stock preferred; upon which note nothing has been paid..... 15.00

Note of J. W. Bates dated August 1, 1918, for $2,912.85; payable on demand with interest at 5% per annum, upon which there has been paid on account of principal $18.71, and interest has been paid to March 1, 1920..... No value

Note of Crown Willamette Paper Company dated January 11, 1919, for $50,000, payable on demand with interest at 6% per annum, upon which the interest has been paid to August 1, 1920..... 50,000.00

Note of Myron T. Holcomb dated January 14, 1918, for $1,788.25, payable on demand with interest at 5% per annum, upon which nothing has been paid. No value

Note of E. J. Miley dated May 1, 1917, for $7,933.50, payable one year after its date with interest at 6% per annum, upon which $4,183.50 has been paid on account of principal and interest to October 15th, 1918, secured by 17,867 shares of the capital stock of State Consolidated Oil Company, evidenced by Certificate No. 1310 for 10,000 shares and Certificate No. 1311 for 7,867 shares..... 3,750.00

[fol. 28] Note of State Consolidated Oil Company dated July 1, 1914, for $80,000, payable in instalments with interest at 6% per annum, upon which $68,221.93 has been paid on the principal and the interest has been paid to January 1, 1918, secured by Deed of Trust made by the State Consolidated Oil Company to Savings Union Bank and Trust Com-

pany as trustee, conveying real property situated in the County of Kern, State of California and recorded on the 21st day of July, A. D. 1914, in the office of the County Recorder of said County of Kern, in Liber 293 of Trust Deeds at page 47.. 13,616.45

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon, dated Feb. 1, 1918, for $4,095.00, payable three years after date with interest from Feb. 1, 1919, at rate of 6% per annum; upon which $1,475 has been paid on account of the principal and the interest has been paid to May 1, 1920, secured by Mortgage dated Feb. 1, 1918, and recorded Feb. 21, 1918, in Book B, Volume 134 of Mortgages at page 254, San Joaquin County Records..... 2,661.92

Note of William Locke Paddon, U. M. L. Paddon, [fol. 29] Charles Locke Paddon and Elvalynne D. Paddon dated February 1, 1918, for $900.00; payable three years after date with interest from February 1, 1919 at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages at page 252 San Joaquin County Records..... 914.40

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated Feb. 1, 1918, for $600.00, payable three years after date with interest from Feb. 1, 1919, at the rate of 6% per annum; upon which $420.00 has been paid on account of the principal and the interest has been paid to May 1, 1920, secured by Mortgage dated Feb. 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages at page 264 San Joaquin County Records.... 182.88

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the [fol. 30] interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded Feb. 21, 1918, in Book B, Volume 134 of Mortgages at page 257, San Joaquin County Records..... 356.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the

interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 259, San Joaquin County Records... 356.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $175.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 255, San Joaquin County Records... 178.30

Note of William Locke Paddon, U. M. L. Paddon, [fol. 31] Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $225.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 262, San Joaquin County Records... 228.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $225.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 247, San Joaquin County Records... 228.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $171.51, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by [fol. 32] Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 245, San Joaquin County Records 174.25

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 266, San Joaquin County Records. 350.00

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $175.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 274, San Joaquin County Records...	175.00
Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon [fol. 33] dated February 1, 1918, for $225.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 250, San Joaquin County Records	225.00
Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $135.00, payable three yars after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 269, San Joaquin County Records..	135.00
Judgment against Wickham Havens and allowed claim against Estate of Frank C. Havens, deceased, upon which there remains due and unpaid a balance of $5,354.36 with interest thereon from July 23, 1920, at 7% per annum.....	2,500.00
[fol. 34] Liberty Bonds:	
Second 4's $4,000.00.....	3,430.55
Third 4¼'s $30,500.00	27,627.90
Fourth 4¼'s $28,000.00	24,196.65
Victory 4¾'s $30,000.00	28,962.59
Chattels:	
One equal half interest in live stock on Alamo and Blum Ranches in Contra Costa County, consisting of 8 head of horses and about 250 head of cattle...	5,080.00
Total	$1,807,627.40

Said inventory contained an item of $1,877.33, which was income accruing to the estate subsequent to the death of said deceased and is, therefore, not

taxable. Deducting said sum from the total appraised value of the estate leaves a fair market value of the Californian estate $1,802,750.07

The following personal property, situate in Maine and not brought into this State is nevertheless taxable here and was appraised by the official appraiser in Maine at the figures hereinafter set forth:

Cash	103.18	
[fol. 35] Jewelry in Safe Deposit Box 1383 of Portland Safe Deposit, Portland	15,238.00	
Jewelry in Safe Deposit Box 705 of Fidelity Trust Co., Portland	1,784.55	
2 Automobiles $5,000.00		
300.00		
	5,300.00	
Furniture, livestock, implements, etc., at Baldwin Farm	17,492.45	
		39,918.18

Adding said sum of $39,918.18 to the fair market value of the Californian estate makes a total market value of the property subject to inheritance tax of $1,842,668.25

Deductions should be made therefrom as follows:

Commissions	$10,500.00	
Counsel fees	10,500.00	
Debts (claims)	8,081.56	
Funeral expenses	1,080.00	
Expenses of Administration	6,525.68	
Taxes	1,876.01	
1920 Income Tax estimated up to the day of the death	950.00	
		39,513.25

The Clear Market Value of said Estate subject to tax is therefore $1,803,155.00

[fol. 36] That said property passed to the following named persons, whose relationship to decedent, the character and clear market value of whose respective interests at the time of the death of decedent and the inheritance or transfer tax due thereon, are as hereinafter shown:

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Bessie Paxton, stranger.			
Money	$5,000.00	$500.00	
Ring	500.00	5,000.00 at 5% ..	$250.00
	$5,500.00		
John Paxton, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Roma P. Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	1,500.00	6,000.00 at 5% ..	$300.00
	$6,500.00		
Roma Lawrence Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	900.00	5,400.00 at 5% ..	$270.00
	$5,900.00		
Margaret L. Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	425.00	4,925.00 at 5% ..	$246.25
	$5,425.00		
Wm. H. Bowers, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Cornelia Pringle, stranger.			
Money	$5,000.00	$500.00	
[fol. 37]		4,500.00 at 5% ..	$225.00
S. S. Cummins, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Mrs. Bronson Peck, stranger.			
Money	$1,000.00	$500.00	
		500.00 at 5% ..	$25.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Mrs. Fannie Foss, stranger			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Dr. William H. Flint, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5% ..	$475.00
J. S. Beecher, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Caroline Bowers Woodman, stranger.			
Money	$30,000.00		
Ring	750.00		
Pin	2,700.00		
Silverware, laces, furs..	2,097.50		
	$35,547.50	$500.00 24,500.00 at 5% .. 10,547.50 at 10% .	$1,225.00 1,054.75
			$2,279.75
Dr. Harry F. Hamilton, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Mrs. Florence Johnson, stranger.			
Money	$10,000.00		
20 shs. H. & W. Pierce Co.	4,000.00		
Pin	800.00		
	$14,800.00	$500.00 15,300.00 at 5% ..	$715.00
Mrs. F. C. Bates, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Olga de la Vaissiere, stranger.			
Money	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00

[fol. 38]

Name, relationship to deceased, character and value of interest	Exemption and rates	Tax
William Pierce, cousin.		
Money $25.00	$1,000.00	No tax.
Lewis Pierce, cousin.		
Money $25.00	$1,000.00	No tax.
Ju Mon Sow, stranger.		
Money $1,000.00	$500.00	
Ju Wong, stranger.		
Money $1,000.00	500.00 at 5% ..	$25.00
	$500.00	
Yim Wong, stranger.	500.00 at 5% ..	25.00
Money $1,000.00	$500.00	
	500.00 at 5% ..	$25.00
Mrs. Harriet Lothrop, stranger.		
Money $10,000.00	$500.00	
	9,500.00 at 5% ..	$475.00
Wm. Pringle Houghton, stranger		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00
John Thayer Bates, stranger.		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00
Ida M. Smith, stranger.		
Money $2,000.00		
Pin 100.00		
$2,100.00	$500.00	
	1,600.00 at 5% ..	$80.00
Mrs. Adah Barclay, stranger		
Money $15,000.00	$500.00	
	14,500.00 at 5% ..	$725.00
Gordon Barclay, stranger.		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Nellie Watkinson, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5%..	$475.00
[fol. 39]			
William T. Smith, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Miss Arline Towne, stranger.			
Money	$5,000.00		
Watch	20.00		
	$5,020.00	$500.00 4,520.00 at 5%..	$226.00
Lindsay Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
William Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Josephine Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Miss Sophia Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Harriet Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
William Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
John Morss, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Martin Blote, stranger.			
Money	$2,000.00	$500.00 1,500.00 at 5%..	$75.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Mrs. Sophia G. Pierce, stranger.			
20 shs. H. & W. Pierce Co.	$4,000.00	$500.00 3,500.00 at 5% ..	$175.00
Mrs. Sophia Brownell, cousin.			
10 shs. H. & W. Pierce Co.	$2,000.00	$1,000.00 1,000.00 at 4% ..	$40.00
[fol. 40] Mrs. Arline Towne, stranger.			
10 shs. H. & W. Pierce Co.	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00
Mrs. Josephine Milton (nee Johnson), stranger.			
10 shs. H. & W. Pierce Co.	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00
Ann P. Milton, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5% ..	$475.00
Elizabeth L. Austin, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
8 cousins not mentioned in will,			
Money	$80.00	$1,000.00 each	No. tax.
Steep Falls Library,			
Books	$908.45		
Live Stock..	787.40		
Mirror, etc..	35.00		
	$1,730.85	$500.00 1,230.85 at 5% ..	$61.54

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Constance Heeley, stranger.			
Money	$25,000.00		
1/7 Residue.	168,972.85		
	$193,972.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		93,972.85 at 20%.	18,794.57
			$30,019.57
Mrs. Venour Vincent, stranger.			
Money	$10,000.00		
Watch	50.00		
1/7 Residue.	168,972.85		
	$179,022.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		79,022.85 at 20%.	15,804.57
			$27,029.57
[fol. 41]			
Miss Gladys Heeley, stranger.			
Money	$10,000.00		
1/7 Residue	168,972.85		
	$178,972.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		78,972.85 at 20%.	15,794.57
			$27,019.57
Wm. L. Cousins, stranger.			
596 shs. H. & W. Pierce Co.	$119,200.00		
100 shs. Crown Willamette Paper Co..	8,000.00		
Watch	15.00		
Chattels	164.00		
1/7 Residue.	168,972.85		
	$296,351.85	$500.00	

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
		24,500.00 at 5% ..	$1,225.00
		25,000.00 at 10% .	2,500.00
		50,000.00 at 15% .	7,500.00
		100,000.00 at 20% .	20,000.00
		96,351.85 at 25% .	24,087.96
			$55,312.96
Wm. P. Johnson, cousin.			
596 shs. H. & W. Pierce Co.	$119,200.00		
100 shs. Crown Willamette Paper Co..	8,000.00		
Watch Chain	10.00		
1/7 Residue.	168,972.85		
	$296,182.85	$1,000.00	
		24,000.00 at 4% ..	$960.00
		25,000.00 at 8% ..	2,000.00
		50,000.00 at 10% .	5,000.00
		100,000.00 at 15% .	15,000.00
		96,182.85 at 20% .	19,236.57
			$42,196.57
[fol. 42]			
Lucy Ward Stebbins, stranger.			
Money	$5,000.00		
Jewelry	8,502.55		
Furs	1,622.50		
Laces	175.00		
Silver, etc...	300.00		
Chattels	3,201.30		
1/7 Residue.	168,972.85		
	$187,774.20	$500.00	
		24,500.00 at 5% ..	1,225.00
		25,000.00 at 10% .	2,500.00
		50,000.00 at 15% .	7,500.00
		87,774.20 at 20% .	17,554.84
			$28,779.84

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
H. C. McNally, stranger.			
Money	$15,000.00		
100 shs. Crown Willamette Paper Co.	8,000.00		
Automobile .	5,000.00		
Ring	750.00		
Silver, etc...	300.00		
Chattels	3,201.30		
1/14 Residue	84,486.43		
	$116,737.73	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		16,737.73 at 20%.	3,347.55
			$14,572.55
Frank J. Hurley, stranger.			
Money	$5,000.00		
Oakland land	9,000.00		
1/14 Residue	84,486.43		
	$98,486.43	$500.00	
		24,500.00 at 15%.	$1,225.00
		25,000.00 at 10%.	2,500.00
		48,486.43 at 15%.	7,272.96
			$10,997.96
		Total Tax—	$248,097.13

[fol. 43] Miss Lucy Ward Stebbins, Executor.
Frank J. Hurley, Executor.
Messrs. Edward C. Harrison and Maurice E. Harrison, Attorneys for Executrix and Executor, Mechanics' Institute Bldg., San Francisco, Cal.
Dated: January 20, 1921.
W. A. Breen, Inheritance Tax Appraiser.

That Lucy Ward Stebbins and Frank J. Hurley, the duly appointed, qualified and acting executrix and executor of the will of said Henrietta Pierce Watkinson, deceased, filed in said Superior Court, on the 18th day of March, A. D. 1921, and within due time, objections in writing to the said report of said inheritance tax appraiser, and that the following is a copy of said objections in writing, so filed as aforesaid:

[fol. 44] EXECUTORS' OBJECTIONS TO REPORT OF INHERITANCE TAX APPRAISER

Lucy Ward Stebbins and Frank J. Hurley, the executrix and executor of the Will of Henrietta Pierce Watkinson, deceased, object to the report heretofore filed herein by William A. Breen, Esq., as inheritance tax appraiser of the estate of said deceased; and as their grounds of such objection, show unto this Court and allege as follows:

1. That the said decedent in and by her said Will, creates and establishes a trust in certain property and names as the trustees thereof, Harry C. McNally and your petitioner, Lucy Ward Stebbins, and provides further for the payment to said trustees out of said estate, a compensation of five thousand dollars ($5,000) each for their services as such trustees; that the said sums so specified for said services would be and are the reasonable value of such services and constitute, as said executrix and executor are advised and believe, an expense of the proper execution of said Will and of the administration of said estate thereunder, which should be deducted from the value of said estate in arriving at the value of each distributive share [fol. 45] of the residue thereof for the purpose of fixing the inheritance taxes thereon; but that said appraiser has in his said report neglected and refused to make such deduction, with the result that by reason of such refusal to make such deduction, the said appraiser has, in his said report, placed upon said estate as the clear market value thereof a sum too large to the extent of the sum of $10,000, with a consequent excess in the taxes stated by him, amounting to the sum of $2,035.71.

2. That said appraiser has included among the deductions made by him from the gross value of the estate the item of Federal Income Tax for 1920, estimated up to the date of said decedent's death, at the sum of $950.00 only; whereas the same has since been computed and accurately fixed and determined at the sum of $47,409.53, which last named sum your petitioners have been required to pay, and have paid, to the Collector of United States Internal Revenue, as and for such item of income tax; that the failure on the part of said appraiser to deduct said last mentioned sum so paid from and out of said estate, in fixing his net valuation thereof, results in a further excess net valuation of said estate to the extent of the sum of $46,459.53, and a further excess to the extent of $9,457.84 in the amount of taxes stated in said report as payable from said estate.

3. That said executrix and executor have been required and com- [fol. 46] pelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate, to the United States, as and for a Federal Estate Tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, neither the whole nor any part of which is deducted by said appraiser in arriving at the

net value of said estate, subject to inheritance tax; that the failure to deduct said last mentioned sum so paid from and out of said estate, results in a further excess net valuation of said estate to the extent of said sum of $128,730.08, and a further excess to the extent of $26,205.75 in the amount of taxes stated in said report as payable from said estate.

4. That the correction of said report by the deduction from the net value of said estate as thereby shown, subject to inheritance tax, of the items hereinbefore mentioned, would establish as the correct net value thereof the sum of $1,617,965.39 only, and that the difference between the taxes thereon as stated in said report, and the correct amount of taxes thereon, is and would be the sum of $37,699.30.

5. That the exaction of said inheritance tax to the extent of said sum of $37,699.30 would constitute, and constitutes, a taking for [fol. 47] public use without just or any compensation therefor, of the property of said estate and of the residuary legatees and devisees under said Will to the extent of said sum of $37,699.30 and would be, therefore, and is, a violation of the provisions of Section XIV of Article I of the Constitution of the State of California.

6. That to the extent that said report omits the deduction of said Federal Estate Tax amounting to $128,730.08, and imposes inheritance taxes thereon amounting to the sum of $26,205.75, the same constitutes and is a violation of the provisions of Section 1 of Article XIII of the Constitution of the State of California, which exempts from taxation all property which may belong to the United States.

7. That to the extent that said report omits the deduction of said Federal Estate Tax amounting to $128,730.08, and imposes inheritance taxes thereon amounting to the sum of $26,205.75, the same constitutes and is a violation of the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States because it, in effect, deprives said estate and the residuary legatees and devisees under said Will of their property to the amount of said sum of $26,205.75 without due process of law.

[fol. 48] 8. That the Act of the Legislature of the State of California, approved May 23, 1917, and known as the "Inheritance Tax Act" is, so far as it directs, that no deduction shall be made of any estate tax paid to the Government of the United States, in determining the market value of estates subject to inheritance tax, unconstitutional and void, because it contravenes and violates the provisions of Subdivision 30 of Section 25 of Article IV of the Constitution of the State of California, which forbids special legislation changing the law of descent and succession, and because also it contravenes and violates the provisions of Section 1 of Article XIII thereof, which forbids double taxation and provide- that all property shall be taxed in proportion to its value, and that such property as may belong to the United States shall be exempt from taxation.

Wherefore said executrix and executor pray that said report be not confirmed as written, but that the same be amended so as to deduct from the net valuation thereby shown the sum of $185,189.61, and the taxes payable out of said estate, ascertained and fixed accordingly; [fol. 49] and that such other or further order be made in this regard as may be just and proper.

Edward C. Harrison, Maurice E. Harrison, Attorneys for Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased.

That on the 25th day of April, A. D. 1921, the said report of said inheritance tax appraiser, and the said objections thereto, so filed as aforesaid by said executrix and executor, came regularly on for hearing in and by the said Superior Court, pursuant to continuances duly and regularly ordered and had from the 4th day of April, A. D. 1921, originally appointed as the day for the hearing thereof; Edward C. Harrison, Esq., appearing as attorney for the said executrix and executor, and A. W. Brouillet, Esq., appearing on behalf of the State Controller of the State of California, and the County Treasurer of the City and County of San Francisco, and being heard in response to said objections;

That upon such hearing due proof was made to the satisfaction of the Court; that notice of such hearing had been given in all respects as required by law and the order of the Court in that regard;

That upon such hearing it was duly proved on behalf of said [fol. 50] executrix and executor and in support of their objections to said report, that the said executrix and executor had been required and compelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate to the United States as and for the Federal Estate Tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, and that neither the whole nor any part of said sum of $128,730.08 so paid as Federal Estate Tax, is or was deducted by said appraiser in arriving at the net value of said estate, subject to inheritance tax as stated in and shown by his aforesaid report; and that said sum of $128,730.08 constituted and was and is the true and correct amount of the Federal Estate Tax payable upon said estate, correctly computed under and pursuant to the provisions of the aforesaid Act of Congress.

And that after a full hearing had upon said report and said objections thereto, said Superior Court made, on the said 25th day of April, A. D. 1921, its order modifying said report in respect to certain figures therein contained, but overruling and disallowing said objections so far as the same related to the claim made by and on [fol. 51] behalf of said executrix and executor to have said amount of said Federal Estate Tax deducted from the value of said estate in arriving at the net value thereof for purpose of computation of inheritance tax.

And that the following is a copy of said order so made as aforesaid, on said 25th day of April, A. D. 1921.

[fols. 52-57] ORDER MODIFYING AND CONFIRMING REPORT OF INHERITANCE TAX APPRAISER

Omitted; printed side page 2 ante.

[fol. 58] [File endorsement omitted.]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

ORDER SETTLING BILL OF EXCEPTIONS—Filed May 5, 1921

That the said executrix and executor then and there duly excepted to said order so made as aforesaid; and to preserve such exception and properly authenticate the same as matter of record herein, this bill stating the same is hereby settled, allowed and certified on this [fol. 59] 5th day of May, A. D. 1921, by the undersigned.

Frank H. Dunne, Judge of the Superior Court.

Correct: May 4, 1921. A. W. Brouillet, Asst. Inheritance Tax Attorney.

[File endorsement omitted.]

[fol. 60] IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

NOTICE OF APPEAL—Filed June 14, 1921

Notice is hereby given that Lucy Ward Stebbins and Frank J. Hurley, the Executrix and Executor of the will of Henrietta Pierce Watkinson, deceased, hereby appeal to the Supreme Court of the State of California, from all that portion of the order made by the above named Superior Court on the 25th day of April, A. D. 1921, and filed herein on the 29th day of April, A. D. 1921, and recorded and entered on the 5th day of May, A. D. 1921, in Book No. 522 of the Minutes of said Superior Court in Probate at page 376, modifying and confirming the report of the Inheritance Tax Appraiser theretofore filed herein—which portion thereof so hereby appealed from, disallows and overrules certain of the objections duly filed herein by said Executrix and Executor to said report, and refuses to amend said report by the deduction from the net valuation of the estate of said deceased, for the purpose of the computation of the inheritance tax thereon, as made and shown in and by said report, of the sum of $128,730.08 paid by said Executrix and Executor from said estate, as and for a Federal Estate Tax thereon, and by the proper con- [fol. 61] sequent reduction of the said inheritance tax as computed in and by said report.

June 14, A. D. 1921.

Edward C. Harrison, Maurice E. Harrison, Attorneys for Appellants.

Receipt of a copy of the foregoing notice of appeal is hereby admitted this 14th day of June, A. D. 1921.

A. W. Brouillet, Attorney for the State Controller, the County Treasurer, and the Inheritance Tax Appraiser.

[File endorsement omitted.]

[fol. 62] In Superior Court of San Francisco County

Stipulation re Transcript of Record

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the County Clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated July 29th, 1921.

A. W. Brouillet, Assistant Inheritance Tax Attorney and Attorney for State Controller, Respondent. Edward C. Harrison, Maurice E. Harrison, Attorneys for Appellants.

[fol. 63] In Superior Court of San Francisco County

Clerk's Certificate

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, State of California and ex-officio Clerk of the Superior Court in and for said City and County, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said Court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of ——, 1921.

H. I. Mulcrevy, Clerk, by —— ——, Deputy Clerk. (Seal.)

[fol. 64] IN THE SUPREME COURT OF CALIFORNIA

San Francisco. No. 9937. In Bank

In the Matter of the Estate of HENRIETTA PIERCE WATKINSON, Deceased

LUCY WARD STEBBINS and FRANK J. HURLEY, as Executrix and Executor, Appellants,

vs.

RAY L. RILEY, Controller of the State of California, Respondent

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed November 9, 1923

To the Honorable Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California, and the Honorable Associate Justices of said Supreme Court:

Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, Appellants, in the above-entitled cause, feeling themselves aggrieved by the action of the said Supreme Court of the State of California, and of the judgment of the said Supreme Court rendered on the 15th day of August, 1923, affirming the order of the Superior Court of the City and County of San Francisco confirming the report of the Inheritance Tax Appraiser with relation to the State Inheritance Tax to be fixed and paid in the matter of the Estate of Henrietta Pierce Watkinson, Deceased, petitions the said Supreme Court of the State of California for an order allowing the said appellants to prosecute a writ of error to the Supreme Court of the United States, under and according to the laws of the United States, on that behalf made and provided, and particularly under Section 237 of the Judicial Code, as amended, September 6, 1916 (39 Stat. 726) and that a transcript of the record and proceedings and all papers upon which the judgment and rulings herein were rendered, duly authen-[fol. 65] ticated as by law provided, may be sent to the Supreme Court of the United States, and also that an order may be made fixing the amount of cost bond which the appellants shall give and furnish upon said writ of error, and upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error.

Dated: San Francisco, California, November 9th, 1923.

Lucy Ward Stebbins and Frank J. Hurley, Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, by Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Wm. M. Madden, Joseph G. De Forest, Counsel for Appellants, Plaintiffs in Error.

Upon consideration of the above petition for writ of error returnable in the Supreme Court of the United States it is ordered that the said writ of error be, and hereby is allowed as prayed for, upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars ($250.00).

Dated: San Francisco, California, November 9, 1923.

Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 66] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 9, 1923

Now comes Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, the appellants in the above-entitled action, being the plaintiffs in error herein, and in connection with their petition for a Writ of Error, make the following assignment of errors, which they aver occurred in the proceedings, decision and judgment of the said Supreme Court of the State of California in the above-entitled cause, to-wit:

First. The Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States for that the State of California by and through the provisions of said statute assumes and seeks to deprive and does deprive plaintiff in error and certain citizens and persons within the jurisdiction of the State of California of [fol. 67] property without due process of law. That said Subdivision 10 of Section 2 of said statute provides as follows:

"In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States."

Second. That the Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States for that the State of California by and through the provisions of said statute assumes and seeks to deny and does deny to plaintiff in error herein and certain

citizens and persons within the jurisdiction of the State of California the equal protection of the law.

Third. The Court erred in holding that by the provisions of said statute that plaintiff in error is not deprived of property without due process of law.

Fourth. The Court erred in holding that by the provisions of said statutes plaintiff in error is not denied the equal protection of the law.

Fifth. That the Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, Statute of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States, and erred in ignoring the rule laid down in the case of Knowlton vs. Moore, 178 U. S. page 41, which rule applies particularly to the case at bar and which [fol. 68] is to the effect that an arbitrary provision fixing the rate of a succession tax with reference to the sum of the property of another brings about such a profound inequality that it would transcend the limitations arising from the fundamental conceptions of a free Government which underlie all constitutional systems.

Sixth. That the Court erred in adjudging and deciding that said "Inheritance Tax Act" and particularly Subdivision 10 of Section 2 thereof does not contravene the 14th amendment of the constitution of the United States in view of the fact that the 'Inheritance Tax Act" of the State of California has been decided to be a succession tax, that is to say, a tax upon what the transferee receives (Estate of Henry Miller, 184 Cal. 674), and the Federal tax being an estate tax, that is to say, a tax upon what the decedent leaves, there is no escape from the conclusion that the Federal estate tax must be deducted in order to determine the amount upon which the succession tax should be levied.

Seventh. That the Court erred in adjudging and deciding that said "Inheritance Tax Act" of the State of California is valid for the reason that by the terms of said Act it provides for a tax upon property belonging to the United States Government and provides for a lien thereon. Section 3 of said "Inheritance Tax Act" providing as follows:

"Sec. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; provided, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed."

Eighth. That the Court erred in adjudging and deciding that said provisions of the "Inheritance Tax Act" are not repugnant to clause 1 of Section 8 of Article 1 of the Constitution of the United States in that they interfere with the power of Congress to levy and collect [fol. 69] taxes, duties, imports and excises to pay the debts and provide for the common defense and general welfare of the United States.

Ninth. That the Court erred in ordering judgment for the defendant in error herein.

Wherefore, the said appellants pray that the said decision and judgment of the said Supreme Court of the State of California be reversed and that such other or further order be made in this regard as may be just and proper in the premises.

Dated at San Francisco, California, this 9th day of November, 1923.

Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, by Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Joseph D. De Forest, Counsel for Appellants, Plaintiffs in Error.

[fol. 70] IN SUPREME COURT OF CALIFORNIA

BOND ON WRIT OF ERROR FOR $250.00—Approved and Filed November 9, 1923; omitted in printing

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[fol. 71] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 9, 1923

To the Clerk of the said Court:

SIR: Please make and furnish a certified Transcript of Record including the proceedings had in the said Supreme Court of the State of California, for use upon return to Writ of Error returnable in the Supreme Court of the United States in the above-entitled cause, the said Transcript of Record to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in the said Supreme Court of the State of California, to which add a typewritten, or printed copy of the following entitled proceedings that were had, and of papers filed in said Supreme Court of the State of California, viz:

2. Order of submission, entered.

3. Opinion of Supreme Court dated May 24, 1923.

4. Ord granting re-hearing.

5. Opinion of Supreme Court dated August 15, 1923.

6. Judgment (Remittitur).

7. The following papers on Writ of Error returnable in the Supreme Court of the United States:

(a) Petition for and Order Allowing Writ of Error and Fixing [fol. 72] Amount of Bond;

(b) Assignment of Errors;

(c) Bond on Writ of Error;

(d) Præcipe for Transcript of Record;

(e) Certificate of Clerk of the Supreme Court of the State of California to said Transcript of Record;

(f) Original Writ of Error, with Return thereon; and

(g) Original Citation on Writ of Error.

Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Joseph G. De Forest, Attorneys for Appellants, Plaintiffs in Error.

Service of a copy of the within præcipe is hereby admitted this 9th day of November, 1923.

Ray L. Riley, By Z. I. Lucas, Counsel for Respondent, Defendant in Error

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[fol. 73] UNITED STATES OF AMERICA, ss:

IN SUPREME COURT OF CALIFORNIA

WRIT OF ERROR—Filed November 9, 1923

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, appellants, vs. Ray L. Riley, Controller of the State of California, respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground

of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution, a manifest error has happened to the great damage of the said Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of said Will, and of persons interested in said estate, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington, in the District of Columbia, within sixty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, that, [fol. 74] the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 9th day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

F. D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, by Paul P. O'Brien, Deputy Clerk. (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

Allowed by Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 75] IN SUPREME COURT OF CALIFORNIA

CITATION—In usual form, showing service on Ray L. Riley; filed November 9, 1923; omitted in printing

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[fol. 76] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATES RE SUBMISSION

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court dated July 27, 1922, the above entitled cause was submitted on the briefs on file, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D., 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 77] [Title omitted]

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court, dated January 9, 1923, the submission of the above cause was vacated, and the cause resubmitted on the briefs on file, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 78] [Title omitted]

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court, dated January 23, 1923, the above cause was ordered submitted, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 79] [File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER FOR HEARING EN BANC—Filed June 21, 1923

Upon petition for rehearing the judgment of the court heretofore entered herein is hereby vacated and set aside and the same ordered to a hearing before the court in Bank and placed on July Calendar July 2nd.

Dated, June 21, 1923.

Lawlor, Acting C. J.; Lennon J., Waste J., Myers J.

Seawell J. Dissents.

[fol. 80] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATE RE SUBMISSION

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court

dated July 3, 1923, the above entitled cause was argued and ordered submitted, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 81] [File endorsement omitted]

OPINION—Filed May 24, 1923

This appeal is from an order of the superior court confirming the report of the inheritance tax appraiser with relation to the state inheritance tax to be fixed and paid from said estate. Under the provisions of the United States revenue act of 1918 the executors of the estate were required to pay, and did pay, to the federal government, as and for the federal inheritance tax upon said estate, the sum of $128,730.08. The state inheritance tax appraiser in thereafter making his appraisement and report upon said estate refused and failed to deduct any part of this payment in arriving at the value of the estate subject to the state inheritance tax. The report thereon, as to the state tax due, was consequently $26,205.75 greater in amount than such tax would have aggregated had such deduction been made. The court, over the objection of the executors, confirmed said report as to this particular portion thereof and from its order so made and entered this appeal has been taken.

The statutory authority upon which the inheritance tax appraiser relied in making his report to the effect above stated is to be found in subdivision 10 of section 2 of the Inheritance Tax Act of 1917 (Stats. 1917, p. 883), which provides as follows: "In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States." With respect to the interpretation to be placed upon this apparently plain and simple direction of the statute touching the subject with which it deals, the appellant herein, and also the various amici curiæ, who have presented briefs and arguments herein, make two main contentions. First, that the foregoing provisions of the statute, when read in the light of legislative intent and purpose in the enactment of the Inheritance Tax Act of 1917, read as a whole, is not to be given the meaning and effect which its language apparently imports. Second, that if it is to be given such meaning and intent, it is for various reasons unconstitutional and void. As lending support to the first of these contentions, both the appellant and several amici curiæ strongly rely upon certain language used by this court in the matter of the Estate of Kennedy, 157 Cal. 517, in dealing with deductions to be made prior to the inheritance tax appraisement under the provisions of the Inheritance Tax Act [fol. 82] in force at the time of death of the decedent, the language of this court thus relied on reading as follows:

"The provisions of our tax act clearly show that the tax imposed thereby is one solely upon the devisee, legatee, or heir, and one upon him only as to such property as he actually takes on distribution as devisee, legatee, or heir. It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, where the very property to which he is so held to succeed is lawfully diverted by the probate court to other purposes and never can be distributed to him."

The foregoing language of this court was repeated and approved in Estate of Miller, 61 Cal. Dec. 90. It is to be noted, however, that the expression of this court as above set forth was used with reference to the terms and interpretation of the inheritance tax laws of this state as they stood prior to the changes therein worked by the passage of the Inheritance Tax Act of 1917, and particularly of the provision of this later act first hereinabove set forth, and which appears upon its face to have been intended to change the policy of the state with respect to the deduction to be made on account of the federal inheritance taxes imposed or paid prior to the action of the state inheritance tax appraiser and of the court thereon.

In determining the scope and effect of the inheritance tax laws of this state as finally embodied in the Inheritance Tax Act of 1917, the most recent utterances of this court in interpreting and applying the same are, we think, conclusive upon the first branch of this discussion. In the Matter of the Estate of Charlotte Bowditch, 64 Cal. Dec. 152, this court, in defining the theory upon which the state proceeded in the imposition of inheritance taxes, said:

"Of prime importance in all cases concerning the determination of the jurisdiction to impose an inheritance tax is the fundamental proposition that a tax of that character is a tax upon the right or privilege of succeeding to property. 'The so-called right of inheritance and also the right of testamentary disposition are not inherent rights of the individual, nor are they safeguarded or secured in futuro by any provision of our constitution. They are both subject to legislative control and are creatures of legislative will. Consequently the legislature has the power to take away both rights and to make the state the successor to all property upon the death of the owner. The right and power to impose a succession tax rests on this principle.' (Estate of Potter, 63 Cal. Dec. 141.) In other words, the tax is imposed and is sustainable upon the theory that a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state. (In re Wilmerding, 117 Cal. 281, 284.)"

This declared theory and policy of the state of California with respect to this form of taxation removes from this case the necessity for much of the discussion of the questions involved herein, arising out of the conflicting views of the courts of other jurisdictions, due in part to the fact that in certain of these states there exists no express

statutory direction that no deduction shall be made on account of the [fol. 83] prior imposition of the federal tax, and due also in some measure to differences in the form and scope of the various statutes under review in these decisions. A very fair and full review and analysis of the laws of several of the leading states and of the most important state and federal cases construing their provisions upon this subject is to be found in the recent case of In re Fisk's Estate, 189 N. W. (Mich.) 177. (1) If, as this court holds in the Estate of Bowditch, supra, "a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state," it follows necessarily that the state has full power to declare by statute what burdens or incumbrances, which by law or by the act of the decedent had become affixed to the interest of any particular heir, devisee or legatee, shall or shall not be excluded from the computations of the inheritance tax appraiser in reporting the amount of the inheritance tax to be imposed by the state thereon; and it also follows necessarily from the views above expressed by this court in Estate of Bowditch, supra, and from the last above deduction, that the amendment to the prior inheritance tax measures effected by the statute of 1917, and requiring that no deduction should be made on account of the federal inheritance taxes in determining the market value of the property to be charged with the state inheritance tax, is not inconsistent with the other or formerly existing provisions of said statute nor in anywise doubtful as to the interpretation to be given to its plain and simple terms. We find no merit, therefore, in the first contention urged by the appellant and by amici curiæ herein.

The second contention urged by appellant and his associates in the discussion of this appeal is that the provision of the act of 1917 first above quoted herein, if given this interpretation, is for various reasons unconstitutional and void. These reasons, briefly summarized, are that said provision is in violation of section 1 of the fourteenth amendment of the federal Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law; and is also violative of section 1 of article XIII of the Constitution of California, providing that all property shall be taxed in proportion to its value; and of section 11 of article I of the same Constitution, providing that all laws of a general nature shall have a uniform operation; and of subdivision 30 of section 25 of article IV of the said Constitution, providing that the legislature shall not pass local or special laws changing the law of descent or succession; and of section 14 of article I of said Constitution, providing that property shall not be taken for public use without just compensation; and finally that said provision is void as an attempt to tax property of the United States exempt from state taxation under section 1 of article XIII of the state Constitution. (2) The fundamental answer to the most of these constitutional objections is to be found in the proposition above set forth, that an inheritance tax is not a property tax, but is essentially a tax upon the statutory privilege of testamentary transfer or succession, and that the state in extending the

privilege may place such limitations upon it as it deems proper in the way of burdens upon its exercise. This court said as much in the Matter of the Estate of Wilmerding, 117 Cal. 281, 284, in the following words:

"The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only [fol. 84] by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."

(3) In this view of the provision of the statute under consideration it cannot be held violative of the terms of the federal Constitution, since the devisee or legatee of an estate affected by this provision does not become entitled to his portion of the property of the said estate until it has already been burdened with its inheritance tax, and hence by no part of said scheme of taxation can be held to have been deprived of property without due process of law. (U. S. v. Perkins, 163 U. S. 625; Estate of Sherman, 216 N. Y. 168; Booth v. Commonwealth, 130 Ky. 88; Maxwell v. Edwards, 99 Atl. (N. J.) 138; Bankers Trust Co. v. State, 114 Atl. (Conn.) 104.) As to the several sections of the state Constitution referred to in the foregoing objections, it must be held that since these taxes upon the privilege of testamentary transmission and succession, since they are not property taxes, cannot be held subject to the limitations placed by the Constitution upon property taxation. In 26 R. C. L., page 167, this proposition is quite clearly set forth as follows:

"An inheritance tax in any of its customary forms is not a tax on the property of the decedent with respect to which it is levied, but is an excise imposed on the privilege of transmitting or receiving property upon the death of the owner, and consequently is not subject to any of the constitutional limitations upon taxes on property found in the state constitution." (Citing cases.)

(4) As to the appellants' final contention that the provision of the statute under review constitutes an attempt to subject United States property to taxation and is therefore violative of section 1 of article XIII of the state Constitution exempting such property from state taxation, we find it to be without merit. The provision in question does not attempt to lay any burden upon that portion of the estate of the decedent which the federal government has already appropriated in the form of its inheritance tax, nor does it in any degree lessen said amount, its increase of the burden being laid solely upon those whose interest in the estate has already been charged with such federal tax, by forbidding any deduction

on account of such tax. The appellants cite no authorities in support of said contention and we are satisfied none exist.

The order is affirmed.

[fol. 85] IN SUPREME COURT OF CALIFORNIA

OPINION ON REHEARING—Filed August 15, 1923

[Title omitted]

By the Court:

A rehearing was granted in this matter in order that the appellants and the several amici curiae might give the court the benefit of oral argument upon the points urged in their respective petitions for rehearing. Upon such argument and submission of the cause the court adheres to its former conclusions as expressed in the opinion of Mr. Justice Richards pro tem., which opinion, with the insertion of certain more recently cited authorities, reads as follows:

"This appeal is from an order of the superior court confirming the report of the inheritance tax appraiser with relation to the state inheritance tax to be fixed and paid from said estate. Under the provisions of the United States revenue act of 1918, the executors of the estate were required to pay, and did pay, to the federal government, as and for the federal inheritance tax upon said estate, the sum of $128,730.08. The state inheritance tax appraiser in thereafter making his appraisement and report upon said estate refused and failed to deduct any part of this payment in arriving at the value of the estate subject to the state inheritance tax. The report thereon, as to the state tax due, was consequently $26,205.75 greater in amount than such tax would have aggregated had such deduction been made. The court, over the objection of the executors, confirmed said report as to this particular portion thereof and from its order so made and entered this appeal has been taken.

The statutory authority upon which the inheritance tax appraiser relied in making his report to the effect above stated is to be found in subdivision 10 of section 2 of the inheritance tax act of 1917 (Stats. 1917, p. 883), which provides as follows: 'In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.' With respect to the interpretation to be placed upon this apparently plain and simple direction of the statute touching the [fol. 86] subject with which it deals, the appellant herein, and also the various amici curiae who have presented briefs and arguments herein, make two main contentions. First, that the foregoing provision of the statute, when read in the light of legislative intent and purpose in the enactment of the inheritance tax act of 1917, read as a whole, is not to be given the meaning and effect which its language apparently imports. Second, that if it is to be given such

meaning and intent, it is for various reasons unconstitutional and void. As lending support to the first of these contentions, both the appellant and several amici curiae strongly rely upon certain language used by this court in the matter of the Estate of Kennedy, 157 Cal. 517, in dealing with deductions to be made prior to the inheritance tax appraisement under the provisions of the inheritance tax act in force at the time of the death of the decedent, the language of this court thus relied on reading as follows:

"The provisions of our tax act clearly show that the tax imposed thereby is one solely upon the devisee, legatee, or heir, and one upon him only as to such property as he actually takes on distribution as devisee, legatee, or heir. It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, where the very property to which he is so held to succeed is lawfully diverted by the probate court to other purposes and never can be distributed to him."

The foregoing language of this court was repeated and approved in Estate of Miller, 61 Cal. Dec. 90. It is to be noted, however, that the expression of this court as above set forth was used with reference to the terms and interpretation of the inheritance tax laws of this state as they stood prior to the changes therein worked by the passage of the inheritance tax act of 1917, and particularly of the provision of this later act first hereinabove set forth, and which appears upon its fact to have been intended to change the policy of the state with respect to the deduction to be made on account of the federal inheritance taxes imposed or paid prior to the action of the state inheritance tax appraiser and of the court thereon.

In determining the scope and effect of the inheritance tax laws of this state as finally embodied in the inheritance tax act of 1917, the most recent utterances of this court in interpreting and applying the same are, we think, conclusive upon the first branch of this discussion. In the Matter of the Estate of Charlotte Bowditch, 64 Cal. Dec. 152, this court, in defining the theory upon which the state proceeded in the imposition of inheritance taxes, said:

"Of prime importance in all cases concerning the determination of the jurisdiction to impose an inheritance tax is the fundamental proposition that a tax of that character is a tax upon the right or privilege of succeeding to property. 'The so-called right of inheritance and also the right of testamentary disposition are not inherent rights of the individual, nor are they safeguarded or secured in futuro by any provision of our constitution. They are both subject to legislative control and are creatures of legislative will. Consequently the legislature has the power to take away both rights and to make the state the successor to all property upon the death of the owner. The right and power to impose a succession tax rests on this principle.' (Estate of Potter, 63 Cal. Dec. 141) In other words, the tax is imposed and is sustainable upon the theory that [fol. 87] a state which confers the privilege of succeeding to property

may attach thereto the condition that a portion of the property shall be contributed to that state. (In re Wilmerding, 117 Cal. 281, 184.)"

This declared theory and policy of the state of California with respect to this form of taxation removes from this case the necessity for much of the discussion of the questions involved herein, arising out of the conflicting views of the courts of other jurisdictions, due in part to the fact that in certain of these states there exists no express statutory direction that no deduction shall be made on account of the prior imposition of the federal tax, and due also in some measure to differences in the form and scope of the various statutes under review in these decisions. A very fair and full review and analysis of the laws of several of the leading states and of the most important state and federal cases construing their provisions upon this subject is to be found in the recent case of In re Fisk's Estate, 189 N. W. (Mich.) 177. (1) If, as this court holds in the Estate of Bowditch, supra, 'a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state', it follows necessarily that the state has full power to declare by statute what burdens or incumbrances, which by law or by the act of the decedent had become affixed to the interest of any particular heir, devisee, or legatee, shall or shall not be excluded from the computations of the inheritance tax appraiser in reporting the amount of the inheritance tax to be imposed by the state thereon; and it also follows necessarily from the views above expressed by this court in Estate of Bowditch, supra, and from the last above deduction, that the amendment to the prior inheritance tax measures effected by the statute of 1917 and requiring that no deduction should be made on account of the federal inheritance taxes in determining the market value of the property to be charged with the state inheritance tax, is not inconsistent with the other or formerly existing provisions of said statute nor in anywise doubtful as to the interpretation to be given to its plain and simple terms. We find no merit, therefore, in the first contention urged by the appellant and by amici curiæ herein.

The second contention urged by appellant and his associates in the discussion of this appeal is that the provision of the act of 1917 first above quoted herein, if given this interpretition, is for various reasons unconstitutional and void. These reasons, briefly summarized, are that said provision is in violation of section 1 of the 14th amendment of the federal constitution, providing that no state shall deprive any person of life, liberty or property without due process of law; and is also violative of section 1 of article XIII of the constitution of California, providing that all property shall be taxed in proportion to its value; and of section 11 of article I of the same constitution, providing that all laws of a general nature shall have a uniform operation; and of subdivision 30 of section 25 of article IV of the said constitution providing that the legislature shall not pass local or special laws changing the law of descent or succession; and of section 14 of article I of said constitution providing that property

shall not be taken for public use without just compensation; and finally that said provision is void as an attempt to tax property of the United States exempt from state taxation under section 1 of article XIII of the state constitution.

[fol. 88] (2) The fundamental answer to the most of these constitutional objections is to be found in the proposition above set forth, that an inheritance tax is not a property tax, but is essentially a tax upon the statutory privilege of testamentary transfer or succession, and that the state in extending the privilege may place such limitations upon it as it deems proper in the way of burdens upon its exercise. This court said as much in the Matter of the Estate of Wilmerding, 117 Cal. 281, 284, in the following words:

'The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly with the legislative discretion.'

(3) In this view of the provision of the statute under consideration it cannot be held violative of the terms of the federal constitution, since the devisee or legatee of the estate affectd by this provision does not become entitled to his portion of the property of the said estate until it has already been burdened with its inheritance tax and hence by no part of said scheme of taxation can he be held to have been deprived of property without due process of law. U. S. v. Perkins, 163 U. S. 625; Estate of Sherman, 216 N. Y. 168; Booth v. Commonwealth, 130 Ky. 88; Maxwell v. Edwards, 99 Atl. (N. J.) 138; Bankers Trust Co. v. State, 114 Atl. (Conn.) 104). As to the several sections of the state constitution referred to in the foregoing objections, it must be held that these taxes upon the privilege of testamentary transmission and succession, since they are not property taxes cannot be held subject to the limitations placed by the constitution upon property taxation. In 26 R. C. L., p. 167, this proposition is quite clearly set forth as follows:

'An inheritance tax in any of its customary forms is not a tax on the property of the decedent with respect to which it is levied, but is an excise imposed on the privilege of transmitting or receiving property upon the death of the owner, and consequently is not subject to any of the constitutional limitations upon taxes on property found in the state constitution.' (Citing cases.) See, also, In re Frick's Estate, 121 Atl. (Pa.) 35, 39; In re Sanford's Estate, 175 N. W. 506; In re Kirkpatrick's Estate, 275 Pa. 271; New York Trust Co. v. Eisner, 256 U. S. 348; Chanler v. Kelsey, 205 U. S. 479.

(4) As to the appellants' final contention that the provision of the statute under review constitutes an attempt to subject United States

property to taxation and is therefore violative of section 1 of Article XIII of the state constitution exempting such property from state taxation, we find it to be without merit. The provision in question does not attempt to lay any burden upon that portion of the estate of the decedent which the federal government has already appropriated in the form of its inheritance tax, nor does it in any degree lessen said amount, its increase of the burden being laid solely upon those whose interest in the estate has already been charged with such federal tax, by forbidding any deduction on account of such tax. [fol. 89] (U. S. v. Perkins, 163 U. S. 625.) The appellants cite no authorities in support of said contention and we are satisfied none exist."

(5) In their petitions and briefs upon rehearing and upon oral argument thereon, appellants and amici curiæ earnestly insisted that the act in question was discriminatory and therefore void, in that it required residuary legatees to pay a larger inheritance tax in proportion to the value of the estate to which they succeeded than was required of other legatees, even though they be all of the same degree of relationship to the testator. The answer to this contention is twofold, the first being that the act does have a uniform operation, since it applies alike to all residuary legatees, and the second being that any disparity between the net amounts received by different legatees by reason of the operation of the act must be deemed to be chargeable to the testator rather than to the law. The testator is deemed to know the law, and therefore, when in making his will he names one as a specific legatee and another as a residuary legatee, he must be deemed to have intended thereby that the latter should be charged with the amounts required to be paid for the federal tax.

The order is affirmed.

[fol. 90] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

JUDGMENT

The above-entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged and Decreed by the Court that the order of the Superior Court in and for the City and County of San Francisco in the above-entitled cause, be and the same is hereby affirmed, respondent to recover costs of appeal.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 15th day of August, 1913, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 18th day of September, A. D. 1913.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy. (Seal.)

[fol. 91] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATE

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify the foregoing to be the record upon writ of error in the above-entitled matter, consisting of the following documents, to-wit:

Copy of transcript,
Original petition for writ of error,
Copy of order granting same,
Copy of assignment of errors,
Copy of bond,
Original præcipe,
Original writ of error,
Citation (original),
Copy of minute orders dated July 27, 1922, January 9, 1923, January 23, 1923, June 21, 1923, July 3, 1923,
Copy of opinion dated May 24, 1923,
Copy of opinion dated August 15, 1923.
Copy of Judgment,

all being full, true and correct, as shown by the records and files of my office.

Witness my hand and the seal of this court this 13th day of November A. D. 1923.

B. Grant Taylor, Clerk, by A. Erb, Deputy. (Seal of Supreme Court of California.)

Endorsed on cover: File No. 29,973. California Supreme Court. Term No. 227. Lucy Ward Stebbins and Frank J. Hurley, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased, plaintiffs in error, vs. Ray L. Riley, Controller of the State of California. Filed November 26th, 1923. File No. 29,973.

FEB 16 1935
WM. R. STANSBU

Supreme Court of the United States

LUCY WARD STEBBINS and FRANK J. HURLEY, Executrix and Executor of the Will of HENRIETTA PIERCE WATKINSON, deceased,

Plaintiffs in Error,

vs.

RAY L. RILEY, Controller of the State of California,

Defendant in Error.

No. 697
October Term,
1934.

JOINT BRIEF *AMICI CURIAE* FOR CERTAIN DECEDENTS' ESTATES IN NEW YORK.

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SUPREME COURT OF THE UNITED STATES.

LUCY WARD STEBBINS and FRANK J. HURLEY, as Executrix and Executor of the Will of HENRIETTA PIERCE WATKINSON, deceased, *Plaintiffs in Error,* *vs.* RAY L. RILEY, Controller of the State of California, *Defendant in Error.*	No. 227 October Term, 1924.

JOINT BRIEF *AMICI CURIAE* FOR CERTAIN DECEDENTS' ESTATES IN NEW YORK.

Statement.

By permission of the Court upon the consent of counsel for the respective parties, this joint brief is filed *amici curiae* on behalf of certain decedents' estates in New York.

The common Federal question.

The assignment of errors herein (T. R., pp. 31-33) presents the following Federal question affecting the taxation of inheritances in a large number of States, including New York, having "legacy", as distinguished from "estate", taxes at progressive rates:

> Has a State the power in imposing progressive rate legacy taxes to require arbitrarily that the applicable rate, and measure of such tax, be

> determined by attributing to the value of the legacy the amount of the Federal estate tax?

No state statute so providing has been passed on by this Court. The only case now before the Court presenting a similar question but not involving the more marked discrimination on account of graded rates, is *Frick* v. *Commonwealth of Pennsylvania*, Nos. 442-445, October Term, 1923, argued but not decided.

The California provision involved.

California's prior Inheritance Tax Act was construed in *Estate of Kennedy*, 157 Cal. 157; 108 Pac. 280 and *Estate of Miller*, 184 Cal. 674; 195 Pac. 413, as allowing deduction of the Federal estate tax. Such holding gave rise to the provision quoted below, the invalidity of which is claimed herein: (Stat. 1917, ch. 589, §2, subd. 10)

> "In determining the *market* value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States." (italics throughout this brief are ours, except titles)

California's new Inheritance Tax Act of 1921 allows deduction of the Federal estate tax.

Although the instant case arose under the statute of 1917 as quoted above, for the Court's information the provision of California's new Inheritance Tax Act (Ch. 821, Laws 1921 as amended by Ch. 337, Laws 1923) now in force is as follows:

> "§10. In determining the market value of the property transferred, the following deductions and no others shall be made from the appraised value thereof: (a, b, c and d are immaterial subdivisions)

"(e) The amount due or paid the government of the United States as a federal inheritance or estate tax; provided, however, that the amount of such tax allowable herein as a deduction shall be limited to a computation thereof (commencing at the primary rates) made by the acting state inheritance tax appraiser upon his own valuations of that portion of such property only, the transfer of which is taxable under the provisions of this act, by applying to such valuations the exemptions and rates of the federal inheritance or estate tax in force at the date of such transfer."

Recent decisions of this Court defining the nature of the Federal estate tax.

In *Edwards* v. *Slocum*, 264 U. S. 61, 62, the nature of the Federal estate tax was clearly defined:

"But this is not a tax upon a residue, it is a tax upon a transfer of his net estate by a decedent, a distinction marked by the words that we have quoted from the statute, and previously commented upon at length in *Knowlton* v. *Moore*, 178 U. S. 41, 49, 77. It comes into existence *before* and is *independent of* the *receipt of property by the legatee.* It taxes, as *Hanson, Death Duties,* puts it in a passage cited in 178 U. S. 49, 'not the interest to which some person succeeds on a death, but the interest which ceased by reason of the death.' "

Again in *Young Men's Christian Association* v. *Davis*, 264 U. S. 47, 50, the priority thereof was emphasized:

"Congress was thus looking at the subject from the standpoint of the testator and not from the immediate point of view of the beneficiaries. * * * Congress was in reality dealing with the testator *before* his death. * * * In §408 it is declared to be the intent and purpose of Congress that as far as it is practicable and unless otherwise directed

by the testator, the tax is to be paid out of the estate *before distribution.*"

Aside from the sovereign paramount power of the Federal government, an estate tax has a logical priority over a legacy tax. The latter is upon what remains after payment of the former.

The New York Statute.

The "transfers" which are taxable under Article 10 of the New York Tax Law are defined by Section 243 thereof, as amended in 1910:

> "The word 'transfer' as used in this Article shall be taken to include the *passing* of property or any interest therein in the *possession or enjoyment, present or future*, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed."

The similarity of the New York Transfer Tax Law to California's Inheritance Tax Act is apparent from the following excerpt from the same section:

> "The words 'estate' and 'property', as used in this article, shall be taken to mean the property or interest therein *passing or transferred to individuals or corporate legatees,* devisees, heirs, next of kin, grantees, donees or vendees, and *not* as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without the state."

Prior to 1910, the tax policy of New York was quite the reverse. The words "estate" and "property" were then defined to mean "the property or interest therein of the testator, intestate, grantor," etc. passing or transferred and "*not* as the property or interest therein passing or transferred *to* individual legatees, devisees," etc.

The provisions now in force above quoted have been construed, so far as decedents' estates are concerned, as meaning that the New York Transfer Tax Law imposes a *legacy* tax measured by the beneficial interest *passing*.

Matter of Zborowski, 213 N. Y. 109, 113.
New York Trust Co. v. *Eisner*, 256 U. S. 345.

In further construction, it has been held that no deduction of the Federal estate tax is permissible under the terms of the New York statute.

Matter of Sherman, 222 N. Y. 540.
Matter of Carnegie, 236 N. Y. 517.

No federal question was raised in the above cases. Ever since the *Sherman* case, this has been the practice in New York.

Matter of Woolworth, 206 App. Div. 768; appeal denied 207 App. Div. 828; 239 N. Y. (not yet reported).
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Matter of Canda, 114 Misc. 161; reversed on other grounds 197 App. Div. 597.
Matter of Nichols, 120 Misc. 228.
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In this connection, the regulations of the State Tax Commission provide:

> "Article 158—Estate, transfer and inheritance taxes.—Federal estate taxes, • • • imposed upon decedent's estate, are not deductible under any circumstances, either from the residuary estate or from a specific bequest, and this is true regardless of any provision the will of a decedent may contain."

Sections 221 and 221-a of the New York Tax Law classify beneficiaries and fix the tax rates as summarized below:

Beneficiary	Exemption	Amounts to $25,000 over Exemption	$25,000 to 100,000	$100,000 to 200,000	Over $200,000
CLASS A					
Father, mother, husband, wife, child, adopted child, lineal descendant	$500 to lineal descendants, if in excess thereof no exemption. All others $5,000.....	1%	2%	3%	4%
CLASS B					
Brother, sister, wife or widow of son, husband of daughter, mutually acknowledged child...	$500; if in excess thereof no exemption.....	2%	3%	4%	5%
CLASS C					
All others not exempt...	$500; if in excess thereof no exemption.....	5%	6%	7%	8%

A majority of the States allow deduction of the Federal estate tax.

An analysis of the situation in the various states shows that legacy taxes are imposed in all but four—Alabama, Florida, Mississippi and Utah. The first two do not tax legacies or estates in any form. The latter two have estate, in place of legacy, taxes. It might also be mentioned that Oregon and Rhode Island have the dual form of both legacy and estate taxes.

The States (28) listed below now allow deduction of the Federal estate tax in measuring their taxes upon legacies:

By Statute: California, Iowa, Kentucky, Montana, New Jersey and North Carolina.

Under court decision in the absence of specific statutory provision: Connecticut, Illinois, Indiana, Massachusetts, Minnesota, Ohio and Oregon.

In practice, without specific statutory or court authority: Arkansas, Delaware, Georgia, Idaho, Maine, Maryland, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Tennessee, Texas, Vermont and Virginia.

The states (16) which do not allow deduction of the Federal estate tax include:

By Statute: Colorado, Pennsylvania, Rhode Island and South Dakota.

Under court decision in the absence of specific statutory provision: Kansas, Louisiana, Michigan, New Hampshire, New York, Washington and Wisconsin.

In practice, without specific statutory or court authority:

Arizona, Nevada, South Carolina, West Virginia and Wyoming.

In New York and other states, where Federal estate taxes may not now be deducted, legatees are without recourse except on the grounds hereafter discussed, and in the brief for the plaintiffs in error, showing that states exceed their powers in arbitrarily denying such deductions.

ARGUMENT

California's Supreme Court erred in sustaining the validity of the provision that "In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States."

The constitutionality of the present Federal estate tax law was upheld in *New York Trust Company* v. *Eisner,* 256 U. S. 345. The priority of the taxes imposed thereby was established in *Young Men's Christian Association* v. *Davis,* 264 U. S. 47 and in *Edwards* v. *Slocum,* 264 U. S. 61.

By this valid exercise of sovereign power, the Federal Government has excluded *ab initio* such part of decedents' estates, thus appropriated, from disposition by decedents and likewise has limited the State's taxing jurisdiction to the balance.

The effect of the California statute is precisely what this Court condemned in *Knowlton* v. *Moore,* 178 U. S. 41, most recently cited with approval in *Edwards* v. *Slocum* (*supra*).

In *Knowlton* v. *Moore,* the constitutionality of the War Revenue Act of 1898 (20 Stat. 448) was upheld. Such Act, unlike the present Federal estate tax law, but similar to the California statute, imposed graded taxes upon *legacies.* However, the then Federal administra-

tive officials insisted upon the practice of basing the applicable tax rates upon the value of the whole estate instead of the amount thereof actually passing to the legatee. In holding such taxing methods invalid, this Court said: (p. 76)

> "In other words, the construction proceeds upon the assumption that Congress intended to tax the separate legacies, not by their own value, but by that of a wholly distinct and separate thing. But this is equivalent to saying that the principle underlying the asserted interpretation is that the house of A, which is only worth one thousand dollars, may be taxed, but that the rate of the tax is to be determined by attributing to A's house the value of B's house, which may be worth a hundredfold the amount."

The discrimination and inequality resulting from the arbitrary requirement of the California statute that the rate of the legacy taxes in such State be fixed by the amount of the Federal estate tax plus the value of the beneficial interest actually received, is only *different in degree* from that given in the above example.

If taxation of legacies by a rate dependent upon a wholly distinct and separate thing independent of the value thereof, is violative of constitutional limitations, manifestly California has exceeded its power in this regard.

As a more concrete illustration of the palpable arbitrariness of measuring a legacy tax upon a basis in excess of the value of the beneficial interest, this Court continued in *Knowlton* v. *Moore*: (p. 76)

> "The gross inequalities which must inevitably result from the admission of this theory are readily illustrated. Thus, a person dying, and leaving an estate of $10,500, bequeaths to a hospital ten thousand dollars. The rate of tax would be five per cent, and the amount of tax five hundred dollars. Another person dies at the

> same time, leaves an estate of one million dollars, and bequeaths ten thousand dollars to the same institution. The rate of tax would be 12½ per cent, and the amount of the tax $1250. It would thus come to pass that the same person, occupying the same relation, and taking in the same character, two equal sums from two different persons, would pay in the one case more than twice the tax that he would in the other. In the arguments of counsel tables are found which show how inevitable and profound are the inequalities which the construction must produce. Clear as is the demonstration which they make, they only serve to multiply instances afforded by the one example which we have just given."

Sufficient illustration of the arbitrariness of not allowing deduction of the Federal estate tax is given by the actual cases of

> *Matter of Carnegie*, 236 N. Y. 517.
> *Matter of Benson*, 120 Misc. (N. Y.) 136.

Mrs. Carnegie actually received as residuary legatee $2,268,088.44. Under the arbitrary terms of the Transfer Tax Law as applied by court decisions denying the right to deduct the Federal estate tax, her legacy was assessed upon the assumption that she had received $5,343,125.94. The difference, $3,075,037.50 represented the Federal estate tax paid out of the residuary estate before distribution.

The *Benson* case was even more extreme. Therein the New York transfer tax upon the residuary estate was sustained, under the arbitrary requirements of the statute as applied by the New York courts, although the *entire* residuary estate had been exhausted by payment of the Federal estate tax. Here the residuary legatee had the choice of renouncing the legacy or paying the tax out of pocket.

In this instance, the residuary estate consisted only of the amount needed to meet the Federal estate tax on the entire estate. Yet the transfer tax in New York was *wholly* measured by the said residuary legacy, wiped out though it was to meet the estate tax paid to the Federal Government and regardless of the fact that the legatee never received one penny of such legacy.

Could a more arbitrary provision be conceived? Seldom would two different residuary legatees, occupying the same relation and taking in the same character and receiving legacies of the same amount, pay the same tax under such a statute.

Obviously legacy taxes thus imposed constitute a denial of the equal protection of the laws and the taking of property without due process of law.

Such drastic statutory provisions are not sanctioned by the fundamental principles of law, irrespective of constitutional limitations, as indicated in *Knowlton* v. *Moore*, (*supra*): (p. 77)

> "It may be doubted by some, aside from express constitutional restrictions, whether the taxation by Congress of the property of one person, accompanied with an arbitrary provision that the rate of tax shall be fixed with reference to the sum of the property of another, thus bringing about the profound inequality which we have noticed, would not transcend the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems."

This Court could not have stated more graphically the fundamental reason why the California Inheritance Tax Act is invalid. In effect, the California statute arbitrarily provides that the rate of tax shall be fixed with reference to the sum of the property of another—the Federal estate tax paid to the United States.

In construing the old Act, California's court of last resort strongly condemned the arbitrary practice of the

State officials in not allowing deduction of the Federal estate tax and held that such deduction should be made.

Estate of Kennedy, 157 Cal. 517; 108 Pac. 280.

The *Kennedy* opinion states: (108 Pac., p. 283)

> "It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, where the very property to which he is so held to succeed is lawfully diverted by the probate court to other purposes and never can be distributed to him."

The same holding was made in *Estate of Miller,* 184 Cal. 674; 195 Pac. 413, wherein the court said: (p. 679)

> "The state tax, then, being a succession tax, a tax upon what the transferee receives, and the federal tax being an estate tax, a tax upon what the decedent leaves, there would seem to be no escape from the conclusion that the federal tax must be deducted in order to determine the amount upon which the state tax should be levied, since it is plain that what the transferee receives is only the portion of what the decedent left which remains after the federal estate tax is taken."

It should be noted here that California adopted the provision of 1917 involved herein without changing the nature of the tax. In other words, after California voluntarily selected the legacy tax as the condition therein upon inheritances, more revenue was sought by a wholly inconsistent change in such policy derogatory to the constitutional rights of beneficiaries.

The courts of last resort in many states have recognized that the inclusion of the Federal estate tax as

part of the measure of a state legacy tax is too arbitrary to be countenanced.

COLORADO. *People* v. *Bemis,* 68 Col. 48; 189 Pac. 32.

> "The federal tax is 'imposed upon the transfer of the net estate * * *'. Therefore it is the power to transfer upon death that is taxed by the national law, and the estate, upon the death is, to the extent of the tax, instantly depleted (citing authorities) and, thus diminished goes to the legatees * * *.
>
> "It follows that the state tax must be measured by the estate less the $87,000 [Federal tax]."

CONNECTICUT. *Corbin* v. *Townsend,* 92 Conn. 501; 103 Atl. 647, 649.

> "The tax [Federal estate tax] is no part of the estate at the time of distribution; it has passed from the estate, and the share of the benficiaries is diminished by just so much."

ILLINOIS. *People* v. *Pasfield,* 284 Ill. 450; 120 N. E. 286, 288.

> "The federal Estate Tax Act of September 8, 1916, necessarily operated to lessen, by the amount of such tax, the *clear value* of the beneficial interest which passed to the heirs and legatees in the instant case and prevented their receiving any part of that tax, and the ruling of the county court that the same should be deducted before computing the state tax was correct."

INDIANA. *State* v. *First Calumet Trust & Savings Bank,* 71 Ind. App. 467; 125 N. E. 200, 202.

> "The tax paid to the federal government upon the net estate before distribution cannot in any sense be held to have been any part of the beneficial interest of the respective legatees or dis-

tributees, and the *market value of such beneficial interest must of necessity be the value after deducting the federal tax*, the same having been deducted from the net estate before distribution was made thereof, and it necessarily follows that the state inheritance tax should be computed upon the residue after deducting from the net estate the amount of such federal estate tax."

KENTUCKY. *Bingham's Admr.* v. *Commonwealth*, 244 S. W. 781, 787.

"We think it clear that our statute, although it makes no provision for any deductions, provides that the tax shall be estimated upon the *fair market value* of the beneficial interest of the transferee, and that the Legislature by so providing intended that that interest should be estimated at the time and in the condition that he would receive it, rather than at the time and in the condition that technically the title thereto vested in him. This construction besides being entirely consistent with the language employed, relieves the statute of the *manifest injustice of requiring the transferee to pay an inheritance tax upon the amount of the federal tax*; * * *" (The Federal tax in this case was $7,509,283.65).

MASSACHUSETTS. *Old Colony Trust Co.* v. *Burrell*, 238 Mass. 544; 131 N. E. 321, 323.

"The United States estate tax should have been wholly deducted. In its nature such a tax is a charge upon the net estate transferred by death, and not upon the succession resulting from death (citing authorities). The estate upon the death is, to the extent of the tax, instantly depleted."

MINNESOTA. *State* v. *Probate Court*, 139 Minn. 210; 166 N. W. 125.

"The federal tax operated to lessen, by the amount of such tax, the clear value of the bene-

ficial interest which passed to the two children, and the ruling of the probate court was correct."

NEW HAMPSHIRE. *Williams* v. *State*, 125 Atl. 661, 668.

"The state tax is imposed upon or measured by the amount passing to each legatee or heir. Laws 1915, c. 106, §1. If by virtue of federal legislation or for any other reason a less amount passes under the laws of this state, a less tax is imposed."

NEW JERSEY. *Bugbee* v. *Roebling*, 94 N. J. L. 438; 111 Atl. 29, 30.

"* * * the executor never has or can have a title free of the federal tax. The result is that to ascertain the *clear market value* of the taxable transfer the amount of the *federal tax must be deducted.*"

OHIO. *Tax Com.* v. *Lamprecht*, 107 Oh. St. 535; 140 N. E. 333.

"* * * the conclusion must be reached that every kind of debt, charge, expense, and claim of valid nature against a decedent's estate should be deducted, and the succession tax be computed only upon the net balance."

OREGON. *Inman's Estate*, 101 Or. 182; 199 Pac. 615, 620.

"The federal estate tax, or the tax upon the right to transmit, is, in the final analysis, measured by the net value of the *old interest which ceased with death*; while the inheritance taxes, or the tax upon the right to receive, are measured respectively by the values of the several *new interests which were created by death.* * * * The federal estate tax paid to the national government by the executors reduced the value of the property which passed to the legatees and devisees to the extent of such payment; and hence, when the

> widow and daughters were required to pay an inheritance tax on any part of the amount of the federal estate tax, they were required to pay a tax on property which never passed to them."

The opinion herein below (T. R., pp. 41-45) summarily dismisses the claim of invalidity, without reference to *Knowlton* v. *Moore*, (*supra*), by the flat assertion that the Federal Constitution is inapplicable to inheritance taxes because of the State's plenary power with reference to the succession of property and because such taxes are not upon property.

Evidently the Court overlooked *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, involving the constitutionality of the Illinois State Inheritance Act, wherein it is stated in the opinion:. (p. 292)

> "The power of the States over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that [Federal] constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

Mr. Justice Brewer, in writing a dissenting opinion holding that the Illinois Inheritance Tax Act was repugnant to the Fourteenth Amendment, agreed with the majority of the Court that a state's power in imposing legacy taxes was limited by this constitutional restraint. Where he differed was that he considered the classifications in the Illinois statute were arbitrary and therefore exceeded the State's constitutional power. He forcefully explained why a State has no plenary power by which it can arbitrarily ignore the Fourteenth Amendment with regard to inheritances: (p. 302)

> "The argument is that because the State may regulate inheritances and the extent of testamentary disposition it may impose thereon any burdens,

> including therein taxes, and impose them in any manner it chooses. * * * True, the State may regulate, but it has no arbitrary power in the matter. The property of a decedent does not at death become the property of the State, nor subject to its disposal according to any mere whim or fancy."

This true rule was also given expression in *Maxwell* v. *Bugbee,* 250 U. S. 525, 537:

> "* * * the assessment of such taxes [inheritance] is, of course, subject to applicable limitations of the state and federal constitutions."

The classifications of the Illinois statute imposing progressive rate legacy taxes sustained in the *Magoun* case, were based upon the relationship of the beneficiary to the decedent and upon the value of the beneficiary's interest.

What this Court said with reference to the latter feature indicates the limit to which a State may go: (p. 300)

> "The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the *value* of that inheritance. The condition is not arbitrary because it is determined by *that value* * * *".

Contra, when legacy taxes are graded by something else than, and in excess of, the value of the legacy (as by the inclusion of the Federal estate tax) the condition of inheritance is purely arbitrary. This is obviously so when a statute like California's specifically provides that "*market value*" includes the Federal estate tax.

As the New York statute (Subd. 8, Section 220, Tax Law) imposes the tax "upon the clear market value", the disallowance of the deduction of the Federal estate tax by court construction, results in a similar arbitrary condition upon inheritance.

Where there is a residuary estate, the burden of the inequality of such arbitrary provision is borne alone by the residuary legatee because the Federal estate tax is a charge against the estate as a whole. This makes the invalidity of the statute more pronounced.

Matter of Hamlin, 226 N. Y. 407.
See also T. R., p. 26.

It is no answer to say that all residuary legatees are treated alike. They are not. The taxes on their legacies depend upon the extrinsic circumstance of the Federal estate tax which varies with the size of each estate. The rate therefore, in the same invalid manner as was condemned in *Knowlton* v. *Moore*, (*supra*) depends on the value of something not received. The *Carnegie* and *Benson* cases (*supra*) showed that.

In fact, no two residuary legatees, of different estates, occupying the same relation and taking in the same character, and having beneficial interests of equal net value, would pay the same amount of taxes *unless the entire taxable estate in each instance were also equal in value*—a condition too rare to sustain the constitutionality of a classification.

Citizens of the United States are protected from arbitrary state legislation by the Constitution. Certainly no state has power to impose upon them legacy taxes for the privilege of inheritance and then measure such taxes on a value in excess of the value of the beneficial interest.

The practical effect resulting from the inclusion of the Federal estate tax is

(a) to tax an amount not received,
(b) which amount bears no necessary relation in value to the value of the beneficial interest actually received;

(c) and further, because of the progressive rates, to impose in some cases a higher tax rate upon amounts not received (Federal estate tax) than in other cases, where, notwithstanding, in both instances the beneficial interests actually received are of the same value and the recipient beneficiaries of the different estates occupy the same relation and take in the same character.

As held in *Maxwell* v. *Bugbee, supra,* whatever power states may have with respect to legacies, it does not include the enactment of measures: (250 U. S. at p. 542)

> "so wholly arbitrary and unreasonable to be beyond the legitimate authority of the State."

It is respectfully submitted that the California provision under consideration clearly violates the "due process of law" and "equality" clauses of the Fourteenth Amendment and the rule in *Knowlton* v. *Moore* (*supra*).

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In the Supreme Court
OF THE
United States

Office Supreme Court, U.
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OCTOBER TERM, 1924

LUCY WARD STEBBINS and FRANK J. HURLEY, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased,
Plaintiffs in Error,
vs.
RAY L. RILEY, Controller of the State of California,
Defendant in Error.

No. 227

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR PLAINTIFFS IN ERROR

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BRIEF FOR PLAINTIFFS IN ERROR

STATEMENT OF THE FEDERAL QUESTIONS INVOLVED AND THE MANNER IN WHICH THEY ARE RAISED.

The legislature of the State of California in 1917 passed an Inheritance Tax Act which was one of a series of such acts, the Act of 1917, however, repealing previous acts. In this Act of 1917 it was pro-

vided, in Subdivision 10 of Section 2 thereof that, in determining the market value of the property transferred, no deductions shall be made for any inheritance tax or estate tax paid to the Government of the United States. Previous acts did not contain this deduction and the Supreme Court of the State of California in the *Estate of Miller,* 184 Cal. 674, in interpreting these acts, held that the California inheritance tax was a tax on the beneficial interest of each beneficiary or heir. The Supreme Court of the state held that if there be more than one beneficiary or heir, there is a separate tax on the interest of each, computed on its net clear value and chargeable against it (*Estate of Miller,* 184 Cal. 678). The Supreme Court of California then held that the state tax, being a tax upon what the transferee receives, and the federal tax being an estate tax upon what the decedent leaves, there was no escape from the conclusion that the federal tax must be deducted in order to determine the amount upon which the state tax should be levied, since it was plain that what the transferee receives is only the portion of what the decedent left which remains after the federal tax is taken (*Estate of Miller,* 184 Cal. at pp. 679-680). The Supreme Court of California declared that it would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee or legatee to certain property of the decedent when he never succeeded to such property. This was the construction which the Supreme Court of

California placed upon the Inheritance Tax Acts of 1905, 1911, 1913 and 1915.

In 1917, as already pointed out, the legislature of the State of California, ignoring the demands of justice and equality, as pointed out by the Supreme Court of California, interpolated into the inheritance tax act of that year the provision we have already referred to and which is being attacked here, that in determining the market value of the property transferred, no deduction should thereafter be made for any inheritance tax or estate tax paid the United States Government. This provision remained in the Inheritance Tax Act of California until 1921, when it was repealed. The Inheritance Tax Act of 1921 provided, in Subdivision 10 of Section 2, as follows:

"10. In determining the market value of the property transferred, the following deductions and no others shall be made from the appraised value thereof:

(a) Debts of decedent owing at date of death;

(b) Expenses of funeral and last illness;

(c) All state, county, and municipal taxes which are a lien against said property at the date of death;

(d) The ordinary expenses of administration, including the ordinary fees allowed executors and administrators and the ordinary fees of their attorneys under the provisions of sections one thousand six hundred eighteen and one thousand six hundred nineteen of the Code of Civil Procedure of California;

(e) The amount due or paid the government of the United States as a federal inheritance or estate tax; provided, however, that the amount of such tax allowable herein as a deduction shall be limited to a computation thereof (commencing at the primary rates) made by the acting state inheritance tax appraiser upon his own valuations of that portion of such property only, the transfer of which is taxable under the provisions of this act, by applying to such valuations the exemptions and rates of the federal inheritance or estate tax in force at the date of such transfer;

(f) The amount due or paid any state or states of the United States (excepting California) as a state inheritance, succession or transfer tax provided, however, that the amount of such tax allowable herein as a deduction shall be limited to a computation thereof (commencing at the primary rates) made by the acting state inheritance tax appraiser upon his own valuations of that portion of such property only, the transfer of which is taxable under the provisions of this act, by applying to such valuations the exemptions and rates of such state inheritance, succession or transfer tax in force at the date of such transfer." (Statutes of 1921 Chap. 821, page 1500.)

The provision of the Act of 1917 was repealed upon the recommendation of the Controller of the state for the reason that it was unjust and inequitable. The history of this provision and the recommendation of the Controller are found in the biennial report of the State Controller for 1918-1920, pp. 21-22, as follows:

"FEDERAL ESTATE TAX SHOULD BE ALLOWED AS A DEDUCTION IN CALIFORNIA.

In 1917 the legislature ordained that:

'In determining the market value of the property transferred, no deduction shall be made for any inheritance or estate tax paid to the Government of the United States'.

It will be remembered that at the time the provision was enacted the United States had not yet entered the World War, and the imperative need for federal revenue that later resulted as the immediate effect of that war was not then in existence. It was at that time the opinion of all the states, as well as of the legislature of California, that in enacting a law levying a federal estate or inheritance tax Congress had invaded a source of revenue and was exercising a taxing prerogative that in justice to the respective states should be preserved solely to them. It was felt that in comparison with the sources of revenue available to the federal government, the states were at great and obvious disadvantage and that, therefore, federal inheritance taxation should be resisted and rebuked in every legitimate way.

Accordingly, the legislature of California said that in determining the clear market or net value of property passing by inheritance no deduction should be allowed for the payment of the federal estate tax.

Today conditions are vastly different. It is now apparent that the federal estate tax will be with us for at least many years. The need of the United States for governmental revenue must necessarily continue to be very great for an indefinite period. I, therefore, recommend that in all fairness and equity, the legislature should repeal our present provision, and ordain the federal estate tax to be a proper legal deduction

> in arriving at the clear market value of an inheritance. My reasons are that unless we allow it as a deduction, we really tax a man for something he does not get. He receives an inheritance diminished to the extent of the taxes he is compelled to pay by law, yet is compelled to pay an inheritance tax on the false assumption that he receives the full amount undiminished. This is neither fair nor equitable. The one consideration above all others which has made this law the most popular of all tax laws is its appeal to fairness and equity. Its wholesome purpose has been to rightfully place upon the wealthy a larger share of the burden of taxation which only too often weighs unevenly and hard upon those least able to bear it. But this purpose should only be achieved 'rightfully', and it is not right or just to tax a party for property he does not receive, but on the contrary is diverted from him by operation of law. I respectfully recommend that the present provision denying the exemption of the federal estate tax as a deduction be repealed, and that it be expressly recognized as a proper legal deduction to be allowed in determining the clear market value of inheritance."

It was agreed by all persons concerned therefore, including the officers of the State of California, and the attorneys of the Controller in the present action, that the provision of the Inheritance Tax Act of 1917 was unjust and inequitable. The case comes to this court on a writ of error directed to the Supreme Court of California which, in spite of its previous ruling that such a provision would be unjust and inequitable, in the present case held, on

appeal from the order refusing to modify the report of the Inheritance Tax Appraiser for the State of California so as to allow the deduction of the federal estate tax in arriving at the net value of the estate, that said provision of the Act of 1917, Subdivision 10 of Section 2, was not unconstitutional.

The federal question was first raised in the objections to the report of the Inheritance Tax Appraiser in the Probate Court of the State of California, as will be seen by reference to the transcript of record, folios 44-50. The federal question was pressed strongly upon the Supreme Court of the State of California, but was dismissed in a short paragraph (see folio 88, Transcript of Record).

The question before this court, therefore, resolves itself into this: Does the provision of the California Inheritance Tax Act of 1917, Subdivision 10 of Section 2, which is admittedly an unjust and inequitable provision, and inconsistent with the spirit and meaning of the Inheritanee Tax Act of California, violate the fundamental principles of our Government?

This provision of the Inheritance Tax Act of 1917 admittedly compels the heir, devisee or legatee to pay a tax on the property which he never receives, and admittedly the State of California attempts to tax the separate legacies not by their own value, but by that of a wholly distinct and separate thing. Admittedly by this arbitrary provision, the rate of tax is fixed with reference to the sum of the prop-

erty of another person. Admittedly, the tax imposed under the law of 1917 is upon a privilege or right running to one person, but measured by a distinctly different privilege or right running to another person.

It will be our purpose to show that the unjust burden and profound inequalities arising from the imposition of this tax subject the individual to the arbitrary exercise of the powers of Government unrestrained by the established principles of private right and distributive justice, thus violating the "due process" and "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States.

We respectfully urge upon this court to keep continually in mind in this discussion that the inheritance tax act of California is a legacy tax, a tax upon what the transferee receives, and not a transfer tax, as are the federal estate tax and the inheritance taxes of many states. Argument upon the nature of the California tax is precluded by the *Estate of Miller,* 184 Cal. 674, and kindred cases.

The question is also raised that these provisions of the California Inheritance Tax Act of 1917 are repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that they interfere with the power of Congress to levy and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States.

ASSIGNMENTS OF ERROR.

(Transcript of record, folios 66-70, pp. 31-32.)

FIRST: The court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States for that the State of California by and through the provisions of said statute assumes and seeks to deprive and does deprive plaintiff in error and certain citizens and persons within the jurisdiction of the State of California of (fol. 67) property without due process of law. That said Subdivision 10 of Section 2 of said statute provides as follows:

> "In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States."

SECOND: That the court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the Fourteenth Amendment of the constitution of the United States for that the State of California by and through the provisions of said

statute assumes and seeks to deny and does deny to plaintiff in error herein and certain citizens and persons within the jurisdiction of the State of California the equal protection of the law.

THIRD: The court erred in holding that by the provisions of said statute plaintiff in error is not deprived of property without due process of law.

FOURTH: The court erred in holding that by the provisions of said statutes plaintiff in error is not denied the equal protection of the law.

FIFTH: That the court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California as amended in 1917, Statute of California, 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and erred in ignoring the rule laid down in the case of *Knowlton v. Moore,* 178 U. S. page 41, which rule applies particularly to the case at bar and which (fol. 68) is to the effect that an arbitrary provision fixing the rate of a succession tax with reference to the sum of the property of another brings about such a profound inequality that it would transcend the limitations arising from the fundamental conceptions of a free Government which underlie all constitutional systems.

SIXTH: That the court erred in adjudging and deciding that said "Inheritance Tax Act" and par-

ticularly Subdivision 10 of Section 2 thereof does not contravene the Fourteenth Amendment of the Constitution of the United States in view of the fact that the "Inheritance Tax Act" of the State of California has been decided to be a succession tax, that is to say, a tax upon what the transferee receives (*Estate of Henry Miller,* 184 Cal. 674), and the Federal tax being an estate tax, that is to say, a tax upon what the decedent leaves, there is no escape from the conclusion that the Federal estate tax must be deducted in order to determine the amount upon which the succession tax should be levied.

SEVENTH: That the court erred in adjudging and deciding that said "Inheritance Tax Act" of the State of California is valid for the reason that by the terms of said act it provides for a tax upon property belonging to the United States Government and provides for a lien thereon. Section 3 of said "Inheritance Tax Act" providing as follows:

> "Sec. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; provided, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed."

EIGHTH: That the court erred in adjudging and deciding that said provisions of the "Inheritance

Tax Act" are not repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that they interfere with the power of Congress to levy and collect (fol. 69) taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States.

NINTH: That the court erred in ordering judgment for the defendant in error herein.

STATEMENT OF FACTS.

The above named decedent, Henrietta Pierce Watkinson, died testate August 7, 1920, leaving an estate passing under the Inheritance Tax Laws of California which became effective July 27, 1917. In computing the inheritance taxes due the state, the Inheritance Tax Appraiser in his report made no deduction on account of moneys paid the United States Government as a federal estate tax.

Under the provisions of the Revenue Act of 1918, the executors were required to and did pay to the United States Government from and out of the estate as and for a federal tax thereon, the sum of $128,730.08. The state inheritance tax appraiser in thereafter making his appraisement and report upon such estate, refused and failed to deduct any part of this payment in arriving at the net market value of the legacies subject to the state inheritance tax. The report thereon as to the state tax due was con-

sequently $26,205.75 greater in amount than such tax would have aggregated had such deduction been made, and the legacies bore the burden of this increase. The court, over the objection of the executors, confirmed said report as to this particular portion thereof (Transcript of Record, folios 1-10), and from its order so made and entered, an appeal was taken to the Supreme Court of the State of California (Transcript of Record, folios 10, 60-61). The Supreme Court of California wrote two opinions,—one upon the first submission of the case (folio 81), filed May 24, 1923, and an opinion upon rehearing, filed August 15, 1923 (folio 85). The latter opinion is the reported opinion and is found reported in Volume 191 of the California Reports, at page 591.

From this decision of the Supreme Court of the State of California a writ of error was taken to this court.

The Material Parts of the California Statute Are the Title and Parts of Section 2 and Section 3 of the Statutes of California, Chap. 589, Statutes of 1917, p. 883.

"Inheritance Tax Act of 1917.

An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed, to be known as the 'Inheritance Tax Act'; and

to repeal Chapter five hundred ninety-five of the laws of the session of the legislature of California of 1913, approved June 16, 1913, known as the 'Inheritance Tax Act', and all amendments thereto and to repeal all acts and parts of acts in conflict with this act. (Approved May 23, 1917. In effect July 27, 1917.)

* * * * * * *

Sec. 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rate hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

* * * * * * *

10. In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.

Sec. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; provided, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collec-

tion of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; provided, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; and, provided, that no such lien shall cease within two years from the date of the passage of this act."

The Supreme Court of California has held that the California tax is a succession tax, a tax on the beneficial interest of each beneficiary or heir. If there be more than one beneficiary or heir there is a separate tax on the interest of each, computed on its net clear value and chargeable against it. The court will forgive this reiteration, but we invite a careful perusal of the case of the *Estate of Miller*, 184 Cal. 674.

The Supreme Court of California has also held that the plain purpose of the act was that the clear market value of the beneficial interest transferred should be its net clear value. This has been the construction given it in actual administration by the courts.

Estate of Miller, 184 Cal. 674;
Estate of Kennedy, 157 Cal. 517;
Estate of Hite, 159 Cal. 392.

Point I.

THE SUPREME COURT OF CALIFORNIA IN ITS OPINION IGNORES THE CONSTITUTION OF THE STATE OF CALIFORNIA AND OF THE UNITED STATES IN DEFINING THE POWER OF THE STATE IN LEVYING AN INHERITANCE TAX.

The Supreme Court of California summarily disposes of the arguments addressed to the Fourteenth Amendment to the Constitution of the United States and to the Constitution of the State of California, with a general statement that the state has full and unlimited power to attach conditions and burdens to the privilege of succeeding to property. The Supreme Court of California declares that the State of California has power to confiscate such portion of the estate of a decedent as it sees fit and its opinion makes no allowance for its own Constitution or the Fourteenth Amendment to the Constitution of the United States despite the fact that its own court, as well as this court, has repeatedly declared that taxes, excise, or otherwise, must be levied so as not to produce unequal burdens, arbitrary discriminations or capricious confiscation. The opinion of the court of California is therefore fundamentally unsound under our principles of government and it erroneously assumes that the fundamental principle is the right of the state to compel a contribution from the estate of any decedent, which right of the state it assumes to be unlimited. This is the omniscient, infallible and all-sufficient principle with which the

Supreme Court of California answers every argument advanced in this case.

The opinion of the Supreme Court of California ignores those provisions of the state constitution which recognize the right to inherit in California and protect that right so that the right to inherit may no longer be said to be a creature of the legislature in this state.

Section 25 of Article IV of the Constitution of the State of California provides:

> "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:
>
> Twelfth: Affecting estates of deceased persons, minors or other persons under legal disabilities.
>
> Thirtieth: Changing the law of descent or succession."

Section 8 of Article XX of the State Constitution provides:

> "All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterward by gift, devise or descent, shall be their separate property."

These provisions of the California constitution recognize the laws of descent. At least they place some restraint upon the power of the state.

The opinion of the Supreme Court of California ignores the limitations which the Supreme Court of the United States has always placed upon the

exercise by a state of its power to regulate the right to inherit. Those limitations may be summed up in the expressions of *Magoun v. Illinois Trust & Savings Bank,* 170 U. S. 283; *Campbell v. California,* 200 U. S. 87; *Orr v. Gilman,* 183 U. S. 278.

Defining these limitations this court said in *Orr v. Gilman,* supra, at page 287:

> "In the light of the principles thus established we are unable to see in this legislation of the State of New York, as construed by its highest court, any infringement of the salutary provisions of the Fourteenth Amendment. There are involved no arbitrary or unequal regulations, prescribing different rates of taxation on property or persons in the same condition. The provisions of the law extend alike to all estates that descend or devolve upon the death of those who once owned them. The moneys raised by the taxation are applied to the lawful uses of the state, in which the legatees have the same interests with the other citizens. Nor is it claimed that the amount or rate of the taxation is excessive to the extent of confiscation."

This court also said, in *United States v. Perkins,* 163 U. S. 628:

> "Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."

It is not at all settled, then, that there is no such thing as a natural right to inherit, and this court has never held that all property of a decedent may be confiscated to the state, and there are well defined limitations upon the burdens which the state may impose upon inherited estates. In the ordinary dealings between man and man, the courts are not over-careful in guarding their language as to the rights of heirs, devisees and legatees. They are very liable to call them vested rights. It is only where the taxing power of the state is involved that they resurrect the old theory of grace and privilege and, creatures of the state.

So in this case of the *Estate of Watkinson*, 191 Cal. 597, the Supreme Court of California said:

> "The fundamental answer to the most of these constitutional objections is to be found in the proposition above set forth, that an inheritance tax is not a property tax, but is essentially a tax upon the statutory privilege of testamentary transfer or succession, and that the state in extending the privilege may place such limitations upon it as it deems proper in the way of burdens upon its exercise."

This is the sole answer of the Supreme Court of California to the constitutional argument made in this case even in face of its previous holdings that such an exaction as that complained of here would be unjust and inequitable. Under the reasoning of the Supreme Court in the *Estate of Watkinson*, the heirs, legatees and devisees would not be entitled to any deductions from the gross value of the estate

even though the previous decisions of the Supreme Court required these deductions where no provision was made in the statute for them.

However that may be, the legislature of California since its earliest history has extended this right or privilege to all its citizens, and thereafter in administering these rights or privileges it may not place unjust burdens upon them consistently with the Constitution of the United States.

The following sections of the Civil Code provide:

Sec. 1341:

> "When devises and bequests vest. Testamentary dispositions, including devises and bequests to a person on obtaining majority, are presumed to vest at the testator's death."

Sec. 1342:

> "When cannot be divested. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose."

Sec. 1384:

> "Intestate's estate, to whom passes. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration."

It has been held by the Supreme Court of California in the long line of authorities that the rights

of the heirs, legatees or devisees become vested immediately upon the death of the testator or intestate.

Point II.

IN CALIFORNIA THE RIGHTS OF HEIRS, LEGATEES OR DEVISEES BECOME VESTED RIGHTS AND MAY NOT BE SUBJECTED TO UNJUST BURDENS OR ARBITRARY RULES IN THE LEVYING OF TAXES CONSISTENTLY WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In the *Estate of Stanford*, 126 Cal. 112, the Supreme Court of California held that the right of the state to an inheritance tax was a vested right which became vested immediately upon the death of the decedent. In the *Estate of Stanford*, at page 119, the Supreme Court says:

> "The state here, from the death of the decedent, had a present fixed right of future enjoyment to the five per cent of his estate. This is property or a thing of value belonging to the state.
>
> The following from the Civil Code is merely reciting the common law: 'The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called 'property'. (Civ. Code, Sec. 654.) 'There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author, goodwill of a business, trademarks and signs; and of rights created or granted by statute.'

> (Civ. Code, sec. 655.) It is, therefore, not the possession alone, but the right to possess which constitutes the ownership; *and ownership may be 'of rights created or granted by statute', as the case here.* It would be altogether a new definition in the law to hold that one who had not obtained possession of a thing or had parted with its possession could not be the owner of such thing. This would be contrary to the teachings of elementary law, which recognizes a right in action as well as a right in possession. The rule contended for would make ownership depend altogether upon strength and agility in obtaining and holding possession of things."

To be consistent, in order to support this right of the state, the Supreme Court summoned to its support its former holdings that the right of the beneficiary or heir vested immediately upon the death of the decedent.

So in the case of *Trippett v. State*, 149 Cal. 529, the Supreme Court of California said:

> "The beneficiary under the will, or the heir, is in no way deprived of the benefit of these provisions because the statute enacts or the court holds that the state's right to the tax vests on the decedent's death. The right, although vested, is still, as to actual collection, subject to the appraisement provided for. There is no legal inconsistency in the idea of a right being vested, although the possession may be postponed or contingent upon the performance of certain acts. *An apt example is to be found in the right of the heir himself. It is the settled law of this state that upon the death of an owner of property, intestate, his estate at once descends to and vests in his heirs, subject to the*

possession of the administrator for all purposes of administration. (Civ. Code, sec. 1384; Bates v. Howard, 105 Cal. 173, (38 Pac. 715); Brenham v. Story, 39 Cal. 179.) But the heir must await the completion of administration and the determination of his heirship by the decree of distribution before he can enter upon the enjoyment and possession of his vested right. So here, the fact that the right of the state to the tax is vested on the death of the decedent does not carry with it the right to take possession of the interest so vested without performance of the conditions (of appraisement, notice, etc.) to which its right of possession may be subject. The mere fact that the right of the state to its proportion of the gift or inheritance is declared to vest prior to any appraisement does not deprive the beneficiary or heir of any substantial right where the law affords him the opportunity to be heard as to the amount of the tax before there is any actual collection or payment thereof."

Also see the following cases:

Estate of Woodard, 153 Cal. 39;
Estate of Martin, 153 Cal. 225;
Estate of Kennedy, 157 Cal. 517;
Estate of Potter, 188 Cal. 55-60.

It follows, therefore, that we are dealing with vested rights in dealing with the rights of inheritance or rights of beneficiaries under a will. As a matter of right reasoning, therefore, it would seem that these vested rights may not be subjected to unjust burdens or arbitrary rules either at the moment of vesting or at any time thereafter. To make a distinction giving the state the right to

levy an unjust tax because it was levied at the moment of vesting, a right which admittedly it could not exercise thereafter, leads us into the realm of metaphysics, and this court has never favored metaphysics in dealing with constitutional rights.

As is said by Mr. Justice Holmes in the case of *Chanler v. Kelsey*, 205 U. S. 480:

> "If then a given state tax must be held to be a succession tax in order to maintain its validity, or if in fact it is held to be a succession tax by the state court of which it is the province to decide that matter, it follows that such a tax cannot be levied except where there is a succession, and when some element or step necessary to complete it is wanting when the tax law goes into effect. If some element is wanting at that time, the succession depends, for taking effect, on the continuance of the permission to succeed or grant of the right on the part of the State; and, as the grant may be withdrawn, it may be qualified by a tax. But if there is no succession, or if the succession has fully vested, or has passed beyond dependence upon the continuing of the State's permission or grant, an attempt to levy a tax under the power to regulate succession would be an attempt to appropriate property in a way which the Fourteenth Amendment has been construed to forbid. No matter what other taxes might be levied, a succession tax could not be, and so it has been decided in New York. *Matter of Pell*, 171 N. Y. 48, 55; *Matter of Seaman*, 147 N. Y. 69."

Under the decisions of the Supreme Court of California, the estate of the heir or beneficiary had

become vested at the time that the tax was levied. There was no element or step necessary to complete the vesting at that time.

In the case of *Magoun v. Illinois Trust & Savings Bank,* 170 U. S. 283, at p. 289, this court pointed out, quoting from *United States v. Fox,* 94 U. S. 315, that the power of the state to regulate the tenure of real property within her limits included the transfer and acquisition of such property during life as well as after death and the disposition of such property whether by deed, descent or any other mode. It needs no argument to demonstrate that the state may not place unjust burdens upon or make arbitrary rules for the transfer or acquisition of property by deed. To apply a different rule, therefore, to the vesting of property by the testamentary or intestate laws of the state leads us again into the realm of metaphysics, which may not be tolerated under the Fourteenth Amendment. The basis of the power of the state is the same in both cases.

As is said by Mr. Justice Brewer in his dissenting opinion in the *Magoun* case, p. 302 (and this language is not inconsistent with the majority opinion):

> "True, the state may regulate, but it has no arbitrary power in the matter. The property of a decedent does not at his death become the property of the State, nor subject to its disposal according to any mere whim or fancy. And yet if it is a purely arbitrary power I

do not see what constitutional objection could be raised to any disposition which a legislature might make of the property of any decedent. Take the illustration made by counsel for appellant: Could the legislature of Illinois, which passed this statute, constitutionally enact that the estate of every person dying within the limits of the State should be given to the members of that legislature? Or, if the matter of personal benefit be interposed as against the validity of such legislation, could it enact that the property of A, on his death, should pass to the State; the property of B to some religious or charitable institution; and the property of C be divided among his children? Can there be a doubt that such inequality of legislation would vitiate it? *But whatever may be the power of the legislature, Illinois had regulated the matter of descents and distributions and had granted the right of testamentary disposition.* And now by this statute upon property passing in accordance with its statutes a tax is imposed; a tax unequal because not proportioned to the amount of the estate; unequal because based upon a classification purely arbitrary, to wit, that of wealth—a tax directly and intentionally made unequal. I think the Constitution of the United States forbids such inequality."

Point III.

THE TAX ON THE INTEREST OF THE BENEFICIARY OR HEIR CAN ONLY BE COMPUTED ON THE NET CLEAR VALUE OF SUCH INTEREST AS HE ACTUALLY TAKES ON DISTRIBUTION AS BENEFICIARY OR HEIR CONSISTENTLY WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It is not a matter of importance under the Fourteenth Amendment whether we define the interest of the heir or beneficiary as the result of a right or a privilege. He may not be taxed for property which he never receives nor for a privilege which he never exercises; and the rate of the tax upon what he does receive may not be fixed according to an arbitrary standard, that standard being the property, right or privilege of some other person. Even in dealing with matters over which the state has purely arbitrary power such as the granting to a foreign corporation of the right to do business, this court has held that the state in extending that privilege is bound by the Fourteenth Amendment from arbitrary or capricious acts.

This court said in the recent case of *Airway Electric Appliance Corporation v. Day*, U. S. Supreme Court Advance Opinions, 1924-1925, November 1, 1924, at pp. 13-14:

> "The fee determined by the lower court, as well as that fixed by the state officers, is arbitrary. Without holding that such a charge must be measured by the value of the privilege for which it is imposed, it may be said that some relation to such value is a reasonable requirement."

* * * * * * * *

> "It is clear that the mere number of authorized nonpar-value shares is not a reasonable basis for the classification of foreign corporations for the purpose of determining the amount of such annual fees. Such a classification is not based on anything having relation to the purpose for which it is made. Southern R. Co. v. Green, 216 U. S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247; F. S. Royster Guano Co. v. Virginia, 253 U. S. 412, 415, 64 L. ed. 989, 990, 40 Sup. Ct. Rep. 560. The act has no tendency to produce equality; and it is of such a character that there is no reasonable presumption that substantial equality will result from its application. Martin v. District of Columbia, 205 U. S. 135, 139, 51 L. ed. 743, 744, 27 Sup. Ct. Rep. 440; Gast Realty & Invest. Co. v. Schneider Granite Co., 240 U. S. 55, 58, 60 L. ed. 523, 525, 36 Sup. Ct. Rep. 254; Kansas City Southern R. Co. v. Road Imp. Dist., 256 U. S. 658, 660, 65 L. Ed. 1151, 1156, 41 Sup. Ct. Rep. 604. The act violates the equal protection clause of the 14th Amendment."

Likewise, Mr. Chief Justice Taft in the case of *Truax v. Corrigan*, 257 U. S. 312, discusses again the limits of the Fourteenth Amendment and its equal protection clause in language which reminds one of the early fathers, and in the course of his discussion he says, at page 334:

> "It is beside the point to say that plaintiffs had no vested right in equity relief and that taking it away does not deprive them of due process of law. If, as is asserted, the granting of equitable remedies falls within the police power and is a matter which the legislature may vary as its judgment and discretion shall dictate, this does not meet the objection under the equality clause which forbids the granting

of equitable relief to one man and the denying of it to another under like circumstances and in the same territorial jurisdiction. The Fourteenth Amendment as this court said in Barbier v. Connolly, already cited, intended 'not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property; the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences'."

There are many subjects over which the legislature exercises the power of regulation, and "vested rights" is a more or less indefinite phrase, new meanings being added as the principles of justice and equality may demand.

Under the inheritance tax law of the State of California, as interpreted by the decisions of the Supreme Court, the beneficiary or heir becomes entitled to the net clear value of his legacy, devise or bequest, and this right vests, upon the death of the

decedent, although the possession and enjoyment is postponed.

The Supreme Court of California has decided that the California inheritance tax is a tax upon the legacies, devises or bequests, in other words, upon what the beneficiary or heir actually receives. To fix a computation of this tax according to a purely arbitrary standard (and by arbitrary standard is meant —without some relation to the value of the property received), violates the Fourteenth Amendment, and in the language of *Campbell v. California*, supra, is "beyond the pale of governmental authority".

We come now to the case of *Knowlton v. Moore*, 178 U. S. 41, which sums up and is decisive of this question. This great case which is the basis of the later decisions of this court and the guide and refuge of both the taxing powers and the taxpayers of the United States, is too well understood by this court for extended reference. But it deals with just such a situation as confronts us in the case at bar and it gives concrete examples such as we will give later in this brief of the result of measuring a tax on legacies or devises by purely arbitrary standards.

On pages 76-77 Mr. Justice White says:

> "Granting, however, that there is doubt as to the construction, in view of the consequences which must result from adopting the theory that the act taxes each separate legacy by a rate determined, not by the amount of the legacy, but by the amount of the whole personal estate left by the deceased, we should be

compelled to solve the doubt against the interpretation relied on. The principle on which such construction rests was thus defended in argument. The tax is on each separate legacy or distributive share, but the rate is measured by the whole estate. In other words, the construction proceeds upon the assumption that Congress intended to tax the separate legacies, not by their own value, but by that of a wholly distinct and separate thing. But this is equivalent to saying that the principle underlying the asserted interpretation is that the house of A, which is only worth one thousand dollars, may be taxed, but that the rate of the tax is to be determined by attributing to A's house the value of B's house, which may be worth a hundredfold the amount. The gross inequalities which must inevitably result from the admission of this theory are readily illustrated. Thus, a person dying, and leaving an estate of $10,500, bequeathes to a hospital ten thousand dollars. The rate of tax would be five per cent, and the amount of tax five hundred dollars. Another person dies at the same time, leaves an estate of one million dollars, and bequeathes ten thousand dollars to the same institution. The rate of tax would be 12½ per cent, and the amount of the tax $1250. It would thus come to pass that the same person, occupying the same relation, and taking in the same character, two equal sums from two different persons, would pay in the one case more than twice the tax that he would in the other. In the arguments of counsel tables are found which show how inevitable and profound are the inequalities which the construction must produce. Clear as is the demonstration which they make, they only serve to multiply instances afforded by the one example which we have just given.

We are, therefore, bound to give heed to the rule, that where a particular construction of a

statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute. Bate Refrigerating Co. v. Sulzeberger, 157 U. S. 1, 37; Wilson v. Rousseau, 4 How. 646, 680; Bloomer v. McQuewan, 14 How. 539, 553; Blake v. National banks, 23 Wall. 307, 320; United States v. Kirby, 7 Wall. 482, 486. Indeed, the confusion which gives rise to both of the constructions of the statute which we have just considered comes from the want of insight pointed out by Hanson in a passage which we have heretofore quoted; that is, it arises from not keeping in mind the distinction between a tax on the interest to which some person succeeds on a death and a tax on the interest which ceased by reason of the death, the two being different objects of taxation.

It may be doubted by some, aside from express constitutional restrictions, whether the taxation by Congress of the property of one person accompanied with an arbitrary provision that the rate of tax shall be fixed with reference to the sum of the property of another, thus bringing about the profound inequality which we have noticed, would not transcend the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems. On this question, however, in any of its aspects, we do not even intimate an opinion, as no occasion for doing so exists, since, as we understand the law, we are clearly of opinion that it does not sustain the construction which was placed on it by the court below."

It cannot be that the Supreme Court of California kept in mind in deciding the case at bar, as it

undoubtedly did in the *Estate of Miller,* supra, the distinction between a tax on the interest to which some person succeeds on a death and a tax on the interest which ceased by reason of that death, the two being different objects of taxation.

The Supreme Court of California was too enamoured of the doctrine that the rights of beneficiaries and heirs were the creatures of legislation as interpreted by itself.

The Supreme Court of California overlooked the fact that when privileges or rights are extended or granted they must be by laws operating equally upon all its citizens and that laws which capriciously and arbitrarily lay unjust burdens upon its citizens whether you call their relations to the state privileges or rights, natural or otherwise, violate the Fourteenth Amendment and the fundamental principles of our Government. That unjust burdens lead to profound inequalities is as true as the law of gravitation.

The arbitrary standard of measurement of the California Act of 1917 in including the federal estate tax in the market value of the interest to be taxed is of the same nature as the arbitrary measurement of the tax condemned in *Knowlton v. Moore,* supra.

Under the California Act of 1917 the federal tax paid the United States Government is a part of the gross estate, just as the debts and charges of administration are a part of the gross estate in so far

as the beneficiary or heir is concerned. For the California tax is a legacy tax and not a transfer tax. If the reasoning of the Supreme Court of California is true, the reasoning of Mr. Justice White in *Knowlton v. Moore*, supra, is fallacious. Because, under the doctrine of the California court, a legacy tax could and should be measured according to the value of the gross estate.

Counsel for the State of California rely upon *New York Trust Company v. Eisner*, 256 U. S. 345, which points out that in all taxing statutes there are inequalities which cannot be avoided. The point, however, is that when a tax law directly necessarily and intentionally creates an inequality of burden, it comes in conflict with the Constitution of the United States (*Magoun v. Illinois Trust & Savings Bank*, supra).

In 1910 in the *Estate of Kennedy*, 157 Cal. 517, the Supreme Court of California pointed out that it would be unjust and inequitable to tax the heir and beneficiary for an interest which they never received. In the face of this declaration, the legislature purposely inserted in the Act of 1917 the provision that the federal tax should not be deducted in estimating the market value of the interest transferred.

The tax in question here does not fall within the rule sanctioned in *Magoun v. Illinois Trust & Savings Bank*, supra, wherein it is said at p. 300:

> "The rule does not require, as we have seen, exact equality of taxation. It only requires

> that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, *and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value;* it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' "

But falls within the rule stated in *Dana v. Jackson*, 256 U. S. 599, wherein it is said:

> "A state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—'to spoliation under the guise of exerting the power of taxing.' "

There can be no more glaring example of flagrant and palpable inequality between the burden imposed and the benefit received than that of taxing the heir or beneficiary for a privilege which was never extended, a right which is never enjoyed or property which is never received.

POINT IV.

ASSUMING THAT THE INHERITANCE TAX OF CALIFORNIA IS A PRIVILEGE TAX, THE ACT OF 1917 UNCONSTITUTIONALLY IMPOSES A RULE THAT THE TAX FOR A PRIVILEGE RUNNING TO ONE PERSON SHALL BE MEASURED BY A DISTINCTLY DIFFERENT PRIVILEGE RUNNING TO ANOTHER PERSON.

It becomes evident that the legislature cannot, if we accept the doctrine of *Knowlton v. Moore,* tax one man for a privilege granted to another, and yet the operation of the portion of the act in question does result in this unconscionable situation.

The decedent in her life time is the possessor of a privilege *to transmit* property by deed or will or the laws of succession, though the exercise of that right is taxable only at death; the donee, legatee or heir is the possessor of a privilege *to receive,* taxable only upon the death of the donor, testator or relative.

We do not question the reasonable amount or percentage that might be levied by the state upon either privilege, but we do question its power to tax the beneficiary's *right to receive* based in whole or in part upon the decedent's *right to transmit.*

By the act in question as construed by the court the state, in effect, says to the legatee in this and similar cases:

> "The price you must pay for *your* privilege *to receive* is a certain percentage of what you actually receive and in addition *you* are taxed a further sum for the *privilege granted to the testatrix to transmit.* We define your privilege

> and fix a percentage tax on what you receive measured by the market value, and then collect an additional tax from you upon a privilege granted to the testatrix although *she,* through the executors, has already paid to the government a tax for *her* privilege. *Your* tax is measured in part by the value of the privilege given to the testatrix and for which privilege she has paid a tax to the Federal Government."

This is directly opposed to the view expressed by Chief Justice White in *Knowlton v. Moore,* supra. There the attempted rate of the federal legacy tax was based, not upon the value of the legacy received, but upon the value of all legacies in the entire estate, and therefore was based upon the combined rights of other legatees, and only a strained construction saved the act from being declared invalid.

In the case of a residuary legatee who is also a general or specific legatee, the enforcement of our act would frequently deny to him all right to the bounty of the testator by reason of the illegal measurement of his tax.

Take as an instance the computation of the tax payable by the first legatee named in the order modifying and confirming the report of the inheritance tax appraiser in the case at bar, as shown in folio 5 of the Transcript of Record, to wit:

Name, relationship to deceased, character and value of interest	Exemption and rates	Tax
Constance Heeley, stranger:	$500.00	
	24,500.00 at 5%	$ 1,225.00
	25,000.00 " 10%	2,500.00
Money ..... $ 25,000.00	50,000.00 " 15%	7,500.00
1/7 Residue 162,335.78	87,335.78 " 20%	17,467.16
$187,335.78		$28,692.16

If the residue was entirely depleted by payment of the federal estate tax, as has happened within the knowledge of attorneys for plaintiffs in error the operation of the act in question in conformity with the opinion of the Supreme Court of California would also entirely wipe out the money legacy of $25,000.00, for the inheritance tax exacted is in excess of that amount.

Take the following illustration:

Net Taxable Estate		$2,000,000.00
Federal Tax (act of 1917, effective Oct. 4, 1917)		$ 202,000.00
50,000 at 2%	1,000	
100,000 at 4%	4,000	
100,000 at 6%	6,000	
200,000 at 8%	16,000	
300,000 at 10%	30,000	
250,000 at 10%	25,000	
500,000 at 12%	60,000	
500,000 at 12%	60,000	

Let us say that X, a stranger, is given by will, a legacy of $25,000 and is also residuary legatee, and that the residuum amounts to $202,000

The value of estate upon which X is taxed under the State Act of 1917 is:

Legacy	$ 25,000
Residuum	202,000
	$227,000

The State Tax on $227,000 to a stranger is $37,975.00:

24,500	at 5%	1,225.00
25,000	at 10%	2,500.00
50,000	at 15%	7,500.00
100,000	at 20%	20,000.00
27,000	at 25%	6,750.00
		$37,975.00

From the above it is clear that the legatee X, is deprived of his legacy of $25,000 by reason of the fact that the Act of 1917 declares that he must pay a tax, not only on $25,000, but also on an additional $202,000 which he never received.

If the Watkinson estate were of greater value (and additional legacies bequeathed) the residue would all be used in payment of the federal estate tax, and yet the residuary legatee would be compelled to pay a tax that would entirely deplete the money legacy of $25,000.00; in other words, the legatee of a specified sum who is also named as a residuary legatee, would be compelled to pay a tax governed by the value of the entire estate, a situation that is so forcefully condemned in *Knowlton v. Moore*, supra, where the court calls attention to the gross inequality of taxation upon a basis that at-

tributes "to A's house the value of B's house, which may be worth a hundredfold the amount."

The loss of her share of the *residue* in such an event is not the fault of the Act of 1917 in question, and we make no complaint concerning it, for that loss is occasioned by a valid tax levied by the Federal Government, *but the loss of the money legacy of $25,000.00 is occasioned because her state inheritance tax was measured, not alone by what she received, but mainly by the testatrix's right to transmit, though the exercise of the latter right was fully paid for out of the general estate.*

Under the illustration above set forth, where the residue is depleted by the payment of the federal estate tax, the testator, if the Act of 1917 is valid, in attempting to give more to a legatee already given a specific sum of money in the will, by adding thereto a residuary bequest, succeeds only in depriving the legatee of all the testator attempted to give, including the specific sum of money.

Thus a testator dying while the act was in force gives a legacy to A, a stranger, in the sum of $25,000.00, and the legatee pays a state inheritance tax of $1,225.00, leaving the net amount to be received by him $23,775.00. The testator also makes a bequest to B, a stranger, in the sum of $25,000.00 and then names him as residuary legatee, and in such case B suffers the loss of part or all of his legacy of $25,000.00 by reason of the inequitable provision of the Act of 1917 exacting a tax upon a residue that he never received.

As repeatedly stated, the inheritance tax in California is a succession tax and not an estate or transfer tax, and an estate tax lessens the value of the whole estate and may result in a pro rata reduction of all legacies in the event that the residue is not sufficient to pay the federal estate tax in full, but in the illustration last given there can be no proportionate reduction, because the state inheritance tax is assessed against B and he must pay it even though it entirely depletes his bequest of a specific sum of money.

The same inequality arises in case of intestacy.

Let us assume two cases, the estates of Smith and of Jones.

First: let us assume that Smith leaves a net estate, after payments of debts and expenses of administration, of $100,000, and that the estate goes in equal shares to his two heirs, A and B. Deducting the federal estate tax of 2% on $50,000 thereof (the first $50,000 of the estate being exempt), or $1000 for the tax, leaves $99,000 for distribution, or $49,500 to each of the two heirs.

Next: let us assume that Jones leaves a net estate of exactly $49,500, which all goes to his sole heir, C.

Now we readily concede that the state is not responsible for the fact that A and B, by reason of the imposition of the federal estate tax, together receive no more from the $100,000 estate left by Smith than C receives from the $49,500 estate left by Jones. That is a matter over which the state has

no control, and which cannot be helped. But the state, by its legislation of 1917 attempts to say that A and B shall pay a *state inheritance tax* larger than C, upon the assumption that A and B have each received $50,000, and C but $49,500. The state imposes *its own tax* in such a manner that A and B actually have less distributed to each of them, after deducting the taxes, than has C. Why this discrimination against A and B? It is not the result of paying the federal tax—after payment of that tax there are legacies of equal value available for distribution to A, B and C. It is because *the state* attempts to levy a greater tax against A and B than it does against C, concededly based upon something they do not receive. Because Smith's estate has already contributed to the federal government, the state, for that very reason and no other, takes an additional sum from his heirs, which it does not take from Jones' heir.

In other words, the legislature attempts to tax the several inheritances, not according to their value to the heirs, but by a wholly distinct and different measure, bearing no relation to the benefits conferred upon the persons thus taxed. There is no reasonable ground for this discrimination against A and B and in favor of C. The provision of the Act of 1917 which requires A and B to pay greater state inheritance taxes than C, and leaves *less* to be distributed to each of them from the $100,000 estate of Smith than it leaves to be distributed to C from

the $49,500 estate of Jones, is arbitrary, unfair, and runs counter to the constitutional provision.

Indeed, if we assume that the state, as the opinion holds, may make any such arbitrary rule as the basis for calculating inheritance taxes, then it could just as well declare that the taxes should be levied on the basis of the *gross* estate of the decedent, and that no deduction should be made for debts or expenses of administration. Then we would have such examples of lack of uniformity as this: Smith leaves an estate of $100,000, but of a net value of only $10,000. The inheritance tax, let us assume, is 10% of $100,000, or $10,000, so that the entire net estate is consumed and Smith's heirs get nothing. But Jones leaves an estate of only $50,000 of which $10,000 is net. The inheritance tax of 10% on $50,000 being deducted leaves $5000 for distribution to the heirs. Although both estates are of the same net value the heirs of the $100,000 estate get nothing, but the heirs of the $50,000 estate get $5000! Clearly this is neither uniform law nor due process. And if it is not, then it is equally certain that it is not uniform law to tax one person a greater amount than another, for the privilege of enjoying an inheritance, merely because the one has already contributed to the Federal Government and the other has not.

POINT V.

SUBDIVISION 10 OF SECTION 2 AND SECTION 3 OF THE ACT OF 1917 ARE AN INTERFERENCE WITH THE POWER OF CONGRESS TO LEVY AND COLLECT TAXES, DUTIES, ETC., UNDER CLAUSE 1 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES.

It appears from the history given by the State Controller quoted in the first part of our brief under "Statement of the Questions Involved" that it was the evident intention of the legislature by inserting these provisions in 1917 to rebuke and resist inheritance taxation by the Federal Government. It was intended to deny the paramount right in the Federal Government to first collect its estate tax. This would seem to be so by virtue of the provisions of Section 3 of the Act of 1917, combined with Subdivision 10 of Section 2. Under Section 3, the tax to be paid pursuant to the statute shall remain a lien upon the property passing or transferred until paid. In other words, by the terms of this act, the tax is made a lien upon a fund which belongs in effect to the United States Government and on which the United States Government has a first lien.

It might well occur by reason of the arbitrary measure of taxing required by Subdivision 10 of Section 2, that a combined state and federal tax would be imposed exceeding the value of the property.

We understand this very condition has occurred in the probate court in some of our counties in California. The question of priority then arises. On

this question of priority we think the case of *United States v. San Juan County*, 280 Fed. 120, is sound, and the case of *McCullough v. Maryland*, 4 Wheat. 17 U. S. 316, 431, is applicable. This question was fully discussed in the case of *Frick v. Commonwealth*, No. 442-No. 445, now pending in this court. But the Act of 1917 of the State of California is a more flagrant disregard of the paramount power of the United States Government for the reason that the tax provided therein is purely a legacy tax upon the net clear value of the interests received and still the act provides for a lien upon the fund which goes to the United States Government and which should be deducted before determining the net clear value, but which said act refused to deduct. This is a direct attack upon the paramount taxing power of the United States Government.

CONCLUSION.

The state tax, then, being a succession tax, a tax upon what the transferee receives, and the federal tax being an estate tax, a tax upon what the decedent leaves, there would seem to be no escape from the conclusion that the federal tax should be deducted in order to determine the amount upon which the state tax should be levied, since it is plain that what the transferee receives is only the portion of what the decedent left which remains after the federal tax is taken.

Estate of Miller, 184 Cal. 679-680.

The Inheritance Tax Act of 1917 of the State of California, in Subdivision 10, Section 2, provided that in determining the clear market or net value of property passing by inheritance or will, no deductions should be allowed for the payment of the federal estate tax.

When a tax law directly, necessarily and intentionally creates an inequality of burden, it then becomes imperative to inquire whether this inequality thus intentionally created can find any constitutional justification.

Mr. Justice Brewer in *Magoun v. Illinois Trust & Savings Bank.*

The legislature of the State of California in 1917 directly, necessarily and intentionally imposed an unjust burden upon beneficiaries and heirs in the State of California by taxing them for an interest which they never received. (See Report of State Controller, p. 5 of brief.) This burden is not one of those inequalities which arise in the exercise of the taxing power and cannot be avoided, but was intentionally created by the legislature.

Whatever may be the power of the legislature California had granted the right of testamentary disposition and the right of inheritance to its citizens and these rights become vested upon the death of the testator or intestate, and unjust burdens may not be imposed upon them at the moment of vesting, or thereafter.

Admittedly these provisions of the Inheritance Tax Act of 1917 compelled the beneficiary or heir to pay a tax on property which he never receives; and

Admittedly the State of California attempts to tax the separate legacies, not by their own value, but by that of a wholly distinct and separate thing.

Admittedly the rate of tax is fixed with reference to the sum of the property of another person.

Admittedly the tax imposed under the law of 1917 is upon a privilege or right running to one person, but measured by a distinctly different privilege or right running to another person.

This arbitrary standard of measurement results in gross inequality and "transcends the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems."

Knowlton v. Moore, supra.

In every case of this nature which has come before this court, this court has emphasized the rule that "in assessing a tax upon such right or privilege the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing."

Plummer v. Cole, 178 U. S. 134.

Subdivision 10 of Section 2 and Section 3 of the Act of 1917 are a consciously direct and intentional interference with the power of Congress to levy and

collect its taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.

The issues in this case are far-reaching.

An admittedly unjust and arbitrary tax.

The power of the state invoked on the one hand as an unlimited power to regulate testamentary disposition and inheritance.

On the other hand the limitations of the Fourteenth Amendment.

The issue prophesied by Chief Justice White in *Knowlton v. Moore* is here at last. The results will be far-reaching and deeply impressed.

Dated, San Francisco,
January 26, 1925.

Respectfully submitted,
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JUN 3 1925
SUPREME COURT U.S.

In the Supreme Court
OF THE
United States

268

OCTOBER TERM, 1924

LUCY WARD STEBBINS and FRANK J. HUSLEY, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased,

Plaintiffs in Error,

vs.

No. 287

RAY L. RILEY, Controller of the State of California,

Defendant in Error.

PETITION FOR A REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

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In the Supreme Court
OF THE
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OCTOBER TERM, 1924

No. 227

LUCY WARD STEBBINS and FRANK J. HURLEY, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased,
Plaintiffs in Error,

vs.

RAY L. RILEY, Controller of the State of California,
Defendant in Error.

PETITION FOR A REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

We respectfully present this petition for rehearing of the judgment in the above entitled cause:

In one of the concluding paragraphs (6) of the Opinion in the above case, the court, speaking through Mr. Justice Stone, states the position of plaintiffs in error, as follows:

> "The plaintiffs in error base their argument that this is a denial of the equal protection of the laws on the assumption that the California inheritance tax must be dealt with exclusively as a tax upon succession, and that since the privilege of receiving residuary legacies of like amounts by persons of like relationship is subjected to unequal taxation, the inequality depending upon the size of the estate from which the legacy is received, there is an arbitrary discrimination and a denial of the equal protection of the laws."

This is a very fair, clear and distinct statement of the position of plaintiffs in error. In answer thereto, however, the court, speaking through Mr. Justice Stone, does not seem to attempt to justify such a discrimination between the residuary legatees within the same class upon the ground that there is a reasonable distinction by reason of the size of the estate, but bases its answer upon the proposition that, in so far as the rate of the tax paid by the legatee is determined by the amount paid the United States Government for an estate tax, to this extent the legatee pays a transfer tax as well as a legacy tax. To this extent the court seems to hold that the Inheritance Tax Act of 1917 is a transfer tax as well as a legacy tax, and the legatee pays both taxes. To this extent the court has placed its own construction upon the Inheritance Tax Law of Cali-

fornia for 1917, which of course it is privileged to do if there has been no construction thereof by the Supreme Court of California.

We maintain that such construction of this court is opposed:

First: To the express words of Subdivision 10 of Section 2;

Second: To the express provisions of the Inheritance Tax Law of 1917, as we shall point out; and

Third: To the settled law of California.

Such construction is opposed to the express terms of Subdivision 10 of Section 2, which reads as follows:

> "In determining the market value of *the property transferred*, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States."

Such construction is opposed to the express provisions of the Inheritance Tax Law of 1917, and the settled law of California. We may include both these propositions in one discussion. The settled law of California is found in:

Estate of Kennedy, 157 Cal. 517;
McDougall v. Low, 164 Cal. 110;
Estate of Miller, 184 Cal. 674, top page 682;
Estate of Potter, 188 Cal. 59.

We submit in this connection that this settled law was not modified by the opinion of our Supreme Court in *Stebbins v. Riley*, 191 Cal. 591, inasmuch as that decision was based upon the untrammelled

power of the state to tax, and not upon the nature of the tax.

The Inheritance Tax Act of 1905 is given careful consideration in the *Estate of Kennedy*, supra, to determine the nature of the tax. Practically the same provisions are in the act of 1917.

To make the controlling force of the decision obvious we mark the similarity in the following columns:

Construction given 1905 act in Estate of Kennedy.

(1) "The *all-important section* of the act in this controversy *is the section imposing the tax, the section declaring the property that shall be subject to the tax.* That is *Section* 1. So far as is material here, it provides:

"*All property which shall pass,* by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, * * * *to any person or persons,* or to any body politic or corporate, in trust or otherwise * * * *shall be and is subject to a tax* hereinafter provided for, * * * and such tax shall be and remain a *lien upon the property passed or transferred* until paid and the *person to whom the property passes or is trans-*

Construction of 1917 act in the light of the decisions in Estate of Kennedy and Estate of Miller.

(1) The *all-important* section of the act in this controversy *is the section imposing the tax, the section declaring the property that shall be subject to the tax.* That is *Section* 2. So far as is material here, it provides:

"A *tax shall be and is hereby imposed upon* the *transfer* of any *property* * * * *to persons,* institutions and corporations, * * * *said taxes to be upon the market value of such property at the rates hereinafter* prescribed.

Section 3 provides: "Such taxes shall be and remain a *lien upon the property* passed or transferred until paid * * * *and the person to whom the property passes or is transferred,* * * * shall be liable for any and all such taxes until

ferred * * * shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed."

(157 Cal. 520.)

the same shall have been paid as hereinafter directed."

(2) "*Section* 2 prescribes the rates to be paid by different classes of persons 'entitled to *any beneficial interest in such property' when the property or interest 'so passed or transferred'* exceeds in value the exemption specified in *section* 4 and does not exceed in value twenty-five thousand dollars, while *section* 3 prescribes the rates for amounts in excess of twenty-five thousand dollars."

(157 Cal. 520.)

(2) *Section* 4 prescribes the rates to be paid by different classes of persons "entitled to *any beneficial interest in such property" when the property or interest "so passed or transferred"* exceeds in value the exemption specified in *section* 6 and does not exceed in value twenty-five thousand dollars, while *section* 5 prescribes the rates for amounts in excess of twenty-five thousand dollars.

(3) "Section 28 provides that the words 'estate' and 'property' as used in the act 'shall be taken to mean the real and personal property or interest therein of the testator, intestate, * * * *passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors'."

(157 Cal. p. 521.)

(3) Section 1, Subdivision 2, provides: "The words 'estate' and 'property' as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate * * * *passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or successors."*

(4) "By its terms the taxing act is limited to *such property as* 'shall pass * * *' from the deceased *to some other person."*

(157 Cal. 521.)

(4) The identical terms of the 1917 act similarly limits the tax to *property which "shall pass"* to a person, yet in the very teeth of the limi tation we have an attempt to tax property that never does or can pass to a person.

(5) "In one sense of the word, all of the property of deceased of which he died seized did 'pass * * *' to his sole devisee at the moment of his death, that is, she, by reason of the will, at once became vested with the title to the full property (*Brenham v. Story*, 39 Cal. 188), *but she took under the will 'subject to certain burdens*, as the payment of the debts of deceased, and the right of the Court to appropriate some portion of the estate for * * * (all purposes authorized and enjoined upon it by operation of law)'."

(157 Cal. 521-522.)

"The power of testamentary disposition of property * * * is not paramount, but is subordinate to the authority conferred upon the probate court to appropriate the property for '(other purposes)'. *And to the extent that this power is exercised by the probate court in any estate the legatees take no beneficial interest at all.*"

(157 Cal. 522.)

(5) The reasoning of the Supreme Court in *Estate of Kennedy* is amplified in decisions rendered subsequent thereto.

"This right to receive, which is taxed, is the right as it exists in concrete form, as when it has ripened, *and not as it exists in the abstract*, as *when it is no more than a mere possibility.* All citizens have the abstract right to receive property from the dead, but all citizens do not receive property from the dead. *A tax is not laid upon the abstract right to receive property* from the dead given to every citizen; but *the tax is laid only where the right* to receive has been transformed from an abstract right into a concrete right, *and property is actually transmitted* from the dead."

In re Inman's Estate, 199 Pac. p. 620 (Or.).

Of precisely similar provisos the Supreme Court of California said in

Estate of Miller, 184 Cal. at p. 682.

"It is the settled law of this state that the inheritance tax *is imposed upon the net clear market value of what the transferee receives, and to ascertain this, the value of what he does not* receive, in contemplation of law, *must be deducted from the value of*

(6) "It is clear that the widow *did not* receive any *beneficial interest in* * * * property ("diverted by operation of law") by reason of the will."

(157 Cal. 522.)

"It is recognized by this court and by the courts generally that a tax of this character is not a tax upon property as such, *but one upon the right of succession*, a tax *upon one for the privilege of succeeding to property.*"

(157 Cal. 523.)

Citing with approval from other courts, the Supreme Court further says:

"The tax was * * * on the net proceeds * * * to the persons upon whom it devolves.

"The * * * inheritance tax does not attach to the very articles of property of which the deceased died possessed. *It is imposed only on what remains* for distribution after expenses of administration, debts, *and rightful claims of third parties are paid or provided for. It is on the net successions to the beneficiaries.*"

(157 Cal. 524.)

what the decedent left. The application of this *principle plainly* requires the deduction of the federal estate tax."

(6) It is equally clear that residuary legatees *do not receive any* beneficial interest in property lawfully diverted to pay federal estate taxes. It is also certain that the provisions of the statute *imposing* the tax upon the *beneficial interest received only* are identical in the 1917 act with those contained in the 1905 act upon which the opinion set out in the opposite column is based. Every excerpt of the Kennedy decision is therefore applicable and of controlling force here. No part of the money paid the federal government as taxes remains for distribution.

The federal tax is a rightful claim of a third party that must be satisfied before the legatee can take any part of his legacy.

"It comes into existence before and independent of the receipt of property by the legatee."

Edward v. Slocum, 264 U. S. 61, 62.

Note: The matter in parentheses is our own.

(7) "If no transfer is effected, because it turns out that there is no property to transfer, no tax can be collected."

(157 Cal. 525.)

(7) No transfer to a legatee is effected of moneys diverted to the federal government. Hence no tax is levied thereon.

(8) *"The provisions of our tax act clearly show that the tax imposed thereby is one solely upon the devisee, legatee or heir.* It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, when the very property to which he is so held to succeed is *lawfully diverted by the probate court to other purposes and never can be distributed to him."*

(157 Cal. 526.)

(8) The provisions of the 1917 act impose the tax in the same identical language, and as stated by State Controller Chambers:

"It is neither fair nor equitable" * * * "to tax a man for something he does not get. He receives an inheritance diminished to the extent of the taxes he is compelled to pay by law, yet is compelled to pay an inheritance tax on the false assumption that he receives the full amount undiminished * * * It is not right or just to tax a party for property he does not receive, but on the contrary is diverted from him by operation of law."

(Report of State Controller, 1918-20, page 221.)

We are unable to find where this settled law has been disturbed by the Supreme Court of California in *Stebbins v. Riley.* The language there dealt wholly with the power of the state, and not with the nature of the tax, the court pointing out that the change in the act of 1917 had to do with the "policy of the state with respect to the deduction

to be made on account of the federal inheritance taxes imposed or paid prior to the report of the State Inheritance Tax Appraiser to the court thereof." (Trans. 42.)

It is difficult to escape, therefore, the conclusion that the legislature arbitrarily included within the value of the legatee's estate for the purpose of the tax, the amount paid to the United States Government. If it did so, it arbitrarily imposed a condition upon the legatee which led to the discriminations referred to and squarely admitted and faced by the opinion of this court. We submit, therefore, that the answer of this court to the contention of the plaintiffs in error set forth in the paragraph (6) of the opinion, just discussed, is not a complete answer.

In the next to the last paragraph (7) of the court's opinion, this court, speaking through Mr. Justice Stone, says:

> "There are two elements in every transfer of a decedent's estate: the one is the exercise of the legal power to transmit at death; the other is the privilege of succession. Each, as we have seen, is the subject of taxation. The incidents which attach to each, as we have observed, may be made the basis of classification. We can perceive no reason why both may not be made the basis of classification in a single taxing statute, so that the amount of tax which the legatee shall pay may be made to depend both on the total net amount of the decedent's estate passing under the inheritance and testamentary laws of the state, and the amount of the legacy to which the legatee succeeds under

those laws. Such a classification is not, on its face, unreasonable."

In other words, we understand this holding to be that the legatee may be compelled to pay a tax based not only on the value of the legacy which he receives, but also on the total amount of the decedent's estate passing under the law of the state. In other words, he pays not only a legacy tax, but a transfer tax. It is to be remembered, and this point was not emphasized in argument as it should have been, that the California Inheritance Tax Act is a graduated, progressive tax, and the rate is not a flat rate, but a rate graduated according to the value of the legacy transferred. It follows, therefore, that the legatee would be paying most of his tax, in many instances, upon the value of the net estate passing, but which he never received. This appears to be unreasonable, and although this court suggests that the case of *Knowlton v. Moore* (178 U. S. 41) was concerned with the construction of the Federal act, this very thing was condemned therein, on pages 76 and 77 thereof.

We have never been able to perceive the difference in principle between a Federal act, which sought to impose such a tax, and a State act, which should levy a tax upon a legacy not according to its own value, but according to the value of a wholly distinct and separate thing.

We have never been able to perceive the difference in principle between an excise tax or a regu-

latory tax or a property tax which sought to do these things under the Constitution of the United States.

The case at bar is more extreme than that put by Mr. Justice Stone in his opinion. He says the State may compel a legatee to pay a transfer tax as well as a legacy tax. But in the case at bar the transfer tax has been paid based upon the Government graduated rates. This amount is again added to the value of the legacy for taxable purposes. It is the same as if the State were to levy in the same statute a transfer tax and a legacy tax, imposing both upon the legatee. The transfer tax had been paid based upon graduated rates. The State then compelled the legatee to pay a graduated tax based on the value of his legacy plus the amount already paid the State as a transfer tax, thus pyramiding the legacy tax. So this is more than the payment of a transfer tax and a legacy tax in the first instance by the legatee.

In *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, of which so much has been said in this case, the court said, at p. 292:

> "The power of the states over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that (Federal) Constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

This court further said, on page 300:

> "The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the *value* of that inheritance. The condition is not arbitrary because it is determined by *that value.* * * *"

Connolly v. Union Sewer Pipe Company, 184 U. S. 556-563.

In the latter case this court, speaking through Mr. Justice Harlan, said of *Magoun v. Illinois Trust & Savings Bank,* p. 561:

> "In Magoun v. Illinois Trust and Savings Bank we held that the progressive inheritance tax law of Illinois of June 15, 1895, was not in conflict with the Constitution of the United States by reason of the fact that the amount of the tax was determinable by valuation so that every person and corporation should pay in proportion to the value of his, her or its property inherited. The classification made by the statute was held not to be arbitrary by reason of the fact that inheritances were classified according to amount, and each class taxed at a different rate; for it was based upon principles of equality between the members of each distinct class. Such classification was held not to be inconsistent with the Fourteenth Amendment."

These are not the facts presented by the case at bar. By the court's own statement in this case, as we understand it, there is a discrimination *within* the class of residuary legatees. This discrimination still persists even if the California Act

were construed as partially imposing a transfer tax *paid by the legatee.*

It appears to us that the reasoning in the present case conflicts with the basic reasoning of this court speaking through Mr. Justice Holmes in *Lewellyn v. Frick,* No. 681, decided May 11, 1925, in which this court says:

> "The defendants in error say that if these policies are covered by the statute these sections show that the beneficiaries are taxed upon their own property, under the guise of a tax upon the transfer of his estate by Mr. Frick, and that this is taking their property without due process of law, citing *Matter of Pell,* 171 N. Y. 48, and other cases. In view of their liability the objection cannot be escaped by calling the reference to their receipts a mere measure of the transfer tax. The interest of the beneficiaries is established by statutes of the States controlling the insurance and is not disputed. It also is strongly urged that the tax would be a direct tax. In view of our conclusion it is not necessary to state the position of the defendants in error more in detail.
>
> We do not propose to discuss the limits of the powers of Congress in cases like the present. It is enough to point out that at least there would be a very serious question to be answered before Mrs. Frick and Miss Frick could be made to pay a tax on the transfer of his estate by Mr. Frick. There would be another if the provisions for the liability of beneficiaries were held to be separable, and it was proposed to make the estate pay a transfer tax for property that Mr. Frick did not transfer. Acts of Congress are to be construed, if possible, in such a way as to avoid grave doubts of this kind."

It would seem to us that such a situation arises when the legatee or heir is made to pay a tax upon property transferred to him, based, however, upon the total net amount of the estate which is not transferred to him, although, as we understand the opinion in the present case, this court considers such a tax reasonable.

A very late case on the construction of such an act as the California act with authorities compiled is *Jones v. Bauman,* 234 Pac. 953.

The court has given very full consideration to this matter, and we would hesitate to ask them to even read a petition for re-hearing, laboring as they are under immense burdens, unless we were still unconvinced that a sufficient answer has been made to our contentions.

Dated, San Francisco,
May 27, 1925.

Respectfully submitted,
CAREY VAN FLEET,
JOSEPH G. DE FOREST,
MAURICE E. HARRISON,
Attorneys for Plaintiffs in Error and Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for a rehearing is not interposed to hinder, obstruct or delay the orderly procedure of the Supreme Court of the United States, and was prepared and is filed in good faith, and in my opinion is well founded in point of law.

Dated, San Francisco,
May 27, 1925.

CAREY VAN FLEET,
Attorney for Plaintiffs in Error and Petitioners.

Office Supreme Court,
FILED
FEB 25 1925
WM. R. STANSBURY
Clerk

No. 304.

OCTOBER TERM, 1924.

IN THE

SUPREME COURT OF THE UNITED STATES

LUCY WARD HENDERSON and FRANK J. HURLEY, executors, and executor of the will of Emerson Foster Watkinson, deceased,

Plaintiffs in Error,

vs.

RAY L. RILEY, Controller of the State of California,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1924.

No. 227.

LUCY WARD STEBBINS and FRANK J. HURLEY, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased,

Plaintiffs in Error,

vs.

RAY L. RILEY, Controller of the State of California,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The question presented on this writ of error to the Supreme Court of California involves the deduction of the federal estate tax in arriving at the clear market value of a California estate.

Which of the two taxes is paramount, federal or state; which has priority, the time of their attachment to an estate, are important factors to determine in reaching a solution.

From 1917 to 1921 the California Inheritance Tax Act carried a provision expressly disallowing the federal estate tax as a deduction:

> "In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States."
>
> Subdivision (10) of section 2 of the 1917 Inheritance Tax Act of California (chapter 589, Stats. 1917).

Henrietta Pierce Watkinson died, testate, on August 7, 1920. In computing the inheritance tax due the State of California the inheritance tax appraiser in his report made no deduction on account of moneys paid the United States as a federal estate tax.

Decedent in her will left a residuary estate of more than $1,000,000; the total death duties of both the federal and state governments were less than $400,000. (Record pp. 2 to 4.)

The Controller's Biennial Report.

The materiality of a recital of a portion of a report of a former California State Controller, rests with plaintiffs in error (counsel's brief p. 5). The theme of their brief is woven around certain selected sentences from this extrajudicial document, which was not given consideration in this proceeding by the courts of this state.

Notwithstanding a former Controller's statements the provision in question remained in our Inheritance

Tax Act for a period of four years, although our legislature met biennially during all of which time he was Controller. (And at present like provisions may be found in inheritance tax statutes in more than a dozen sister states.) Hundreds of estates were subjected to tax, without their objecting, and without the allowance of the federal estate tax as a deduction.

Plaintiffs in error misstate the facts when they say:

> "It was agreed by all persons concerned therefore, including the officers of the State of California, and the attorneys of the Controller in the present action that * * * was unjust and inequitable."

The present inheritance tax attorney was not the author of the quoted portion from the Controller's report and played no part in the preparation thereof. The statement of the Controller is entitled to the same weight as any argument presented by a layman before legislative committees for the purpose of securing amendments to a legislative enactment. For the Controller submitting this report was not an attorney.

ARGUMENT.

The challenged provision is the universally accepted statutory enactment. Its long and continued approval by the federal government and the many states is some evidence that the provision is not unjust, unequal, oppressive or arbitrary.

The legislatures of the following states have written into their inheritance tax acts, provisions dis-

allowing the federal estate tax as a deduction in similar language to that found in the California act: South Dakota, Montana, Iowa, Louisiana, New York, Rhode Island, Wisconsin, Pennsylvania and Michigan. In the year 1919 the federal estate tax act was amended, disallowing as a deduction taxes paid other sovereigns.

Plaintiffs in error insist that the California Inheritance Tax Act is "unjust and inequitable" and the provision disallowing the deduction capricious and arbitrary. It is not for us to extol the acumen of a California legislature, but we do wish to speak in the highest terms of the legislatures of the above noted states, as well as of the congress of the United States, all of which have wisely and well written into their various death duty acts like provisions disallowing the deduction. The Supreme Court of California, in the forty-odd times it has been called to pass upon the "Inheritance Tax Act," has turned a deaf ear to those who challenged its provisions as arbitrary or unconstitutional, having in each instance judicially construed the act to arrive at the legislative intent.

Further, the courts of last resort in these various states have all sustained this particular character of legislation as a just and lawful exercise of the legislative function. The cases decided throughout the United States prior to 1924 touching upon the deduction of the federal estate tax or the deduction of state inheritance taxes are collected in volume 7, American

Law Reports, beginning at page 685, and volume 16, American Law Reports, beginning at page 661.

The California "Inheritance Tax Act" is not measured by the value of the interest received by the heir or legatee, but the standard of measurement is based on the value of the privilege to transmit from the dead to the living.

Plaintiffs in error lay special emphasis on the fact that there is language in *Estate of Miller,* 184 Cal. 674, to the effect that the California Supreme Court, in passing upon a matter arising before the amendment disallowing the deduction was written into the act, indicated that the Inheritance Tax Act of California was a legacy tax or a tax upon what the transferee received. It was to fortify the Inheritance Tax Act and to avoid the effect of just such a decision as the court rendered in the *Miller* case that prompted the amendment in question.

The *Miller* case construed the "general provisions" of the then "Inheritance Tax Act," while the court in the instant case has for consideration an amendment to the act which carried a "special provision" added for a specific purpose, *i. e.* to disallow the federal tax as a deduction.

Plaintiffs in error in making such elaborate use of the *Estate of Miller* and *Estate of Kennedy,* 157, Cal. 523, infer that a citizen possesses a constitutional right to have a general proposition of law once adopted, remain unchanged, and that a legislative

declaration to alter an established rule coupled with a decision of the court construing the more recent enactment is a violation of some constitutional right. This honorable court, however, can not be interested in the wisdom of a state legislature in amending its laws, nor the reason adopted by its highest court in construing a law, for decisions of a state court upon such a question of law, however wrong and however contrary to previous decisions, are not an infringement of the fourteenth amendment.

"But we are bound by the construction given to the New York statutes by the New York courts."
Wheeler vs. *New York*, 233 U. S. 438.

"It would be an extraordinary deduction from the fourteenth amendment to deny the power of a state to adopt the usages and views of business men in a statute on the ground that it was depriving them of their property without due process of law. The necessity of caution in cutting down the power of taxation on the strength of the fourteenth amendment often has been referred to."
Louisville & Nashville R. R. Co. vs. *Barber Asphalt Paving Co.*, 197 U. S. 430, 434.

"Unless we are bound by authority, we think the statute, so far as we now are concerned with it, plainly within the power of the state to pass."
Louisville & Nashville R. R. Co., vs. *Barber Asphalt Paving Co.*, 197 U. S. 430, 439.
Patterson vs. *Colorado*, 205 U. S. 454.

"The right to inherit is not a natural right. It does not inhere in any one. It is a creature of the

law, and its existence and limitations must be found in the law. (Citing long list of cases.) Ownership does not extend beyond the life of the owner. The right to transmit title to property to another at the end of the life of the owner did not exist always; it was created by law, upon considerations of public policy, and the law-making power has always retained and still has the authority to designate who shall inherit."

Stone vs. *Elliott,* 182 Ind. 454, 462, 463.

In this case of the *Estate* of *Watkinson,* 191 Cal. 597, the Supreme Court of California said:

"The right of inheritance, * * * as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature, as it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, * * *."

Legislative authority is unlimited in burdening the privilege of inheritance. The principle is fundamental that the rules of transmission and devolution of property are exclusively within the power and control of the individual sovereign state.

The 1917 California "Inheritance Tax Act" is a charge, not based on the amount ultimately received by the beneficiary, for the language of the act provides that not only the value of the estate must be taken as of date of death, but that the tax shall attach and be computed as of that date and be a liens as of that time.

Therefore, NOT EVERY CHARGE AGAINST AN ESTATE IS DEDUCTIBLE. A beneficiary seldom pays a tax upon the exact amount of property distributed to him; for example, property destroyed by fire subsequent to the date of decedent's death and prior to distribution is taxed at its full market value, although at date of distribution its value has been diminished or entirely destroyed. And property stolen or embezzled by an administrator and never distributed is nevertheless taxed to the one to whom it should go at its full market value. *Estate of Hite,* 159 Cal. 392.

Expenses sustained by an estate through useless, wilful and extravagant will contests and litigation are not deducted from the amount of taxable assets (*Matter of Westurn,* 152 N. Y. 93), and under the present inheritance tax act of California only the "ordinary expenses of administration" are recognized deductions.

The authorities are fully in accord that losses to an estate before distribution by fire, earthquake, flood or other act of God, or theft, embezzlement or expensive litigation which caused diversion by act of man is not to be considered as a deduction or diminution of the estate for inheritance tax purposes.

So, we find in the case at bar the property is diverted solely by reason of the act of the federal government, from which government the right to transmit property is not received, and therefore we respectfully urge that when the legislature has

spoken in no uncertain terms as to how such diversion should be treated for taxable purposes these rights should not be defeated by an act of the federal government any more than the act of God or the act of man.

"It is not every legitimate expenditure by an executor or administrator which is to be deducted as an expense of administration in fixing the sum upon which the transfer tax is to be computed. For instance, the transfer tax paid by the administrator in order to effect the transfer of stock in a corporation of another state, which payment is necessary in order to render the stock effective as an asset of the estate, is not to be allowed as an expense of administration in fixing the transfer tax, although it is payable out of the estate upon a final settlement as a disbursement."

Matter of William H. Penfold Estate, 216 N. Y. 171, 110 N. E. 499.

"The necessity for certainty and uniformity in the time when the tax accrues and becomes due and payable required the adoption by the legislature of a fixed and arbitrary rule. * * * If, as claimed by the appellant, the tax is imposed upon the several bequests as choses in action, the value of which can only be determined at some date subsequent to the death of the decedent when on an accounting by the personal representative or otherwise the bequest is received in possession, it would lead to such confusion and uncertainty as to make the collection of the tax unnecessarily burdensome and at least to some extent impracticable."

In re Josephine Penfold, deceased, 216 N. Y. 163, 170.

Our tax is based on the value of the privilege of transmitting property, or rather, upon the vehicle carrying the privilege, a will in the instant case. The charge for this privilege is computed upon the value of the estate owned by the decedent. This is unquestionably true, for our inheritance tax act, section 2 thereof, reads:

> "(a) A tax shall be, and is, hereby imposed upon the transfer of any property * * *,
> (1) 'When the transfer is by will.' "

The California legislature, in expressly failing to allow the federal estate tax as a deduction, indicated that the charge for inheritance should be based on the estate as it existed at time of death, irrespective of the quantum of the bequest ultimately received by the beneficiary. The intention of the California legislature to have its tax attach to an estate prior to the lien of the federal estate tax could not have been expressed in clearer language, nor can the intention of the legislature to exact the tax for the privilege *given to the testator by the sovereign to transmit property be questioned.*

This honorable court in its opinion in *New York Trust Company* vs. *Eisner,* 256 U. S. 345, 349, accepted the language of *Knowlton* vs. *Moore,* 178 U. S. 41, "The power to transmit or the transmission or receipt of property by death" is the privilege upon which

the tax is exacted. "For if the tax attaches to the estate before distribution—if it is a tax on the right to transmit, or on the transmission at its beginning, obviously it attaches to the whole estate except so far as the statute sets a limit."

The principle underlying the theory of inheritance taxation is one of "give and take." In the first instance, we have the state providing a vehicle by means of which disposition of an estate may be made. But in consideration of the use of this right, and it may even be stated so broadly as to say that it is by way of compensation therefor, we have the state exacting a fee, commonly known as a tax or excise, for the right or privilege. The state's charge for this privilege of transmitting is known by the distributor.

It is the privilege, then, which is to be valued and appraised for inheritance tax purposes, and with a view to expressing itself in this particular connection, the legislature has decreed that the value of the privilege, which it has granted and seen fit to tax, shall be determined without regard to the tax which is paid the federal government.

The court of appeal overruled the proposition that the transfer tax in question was a tax upon property and not upon the right of succession, and held that when David Dows, senior, devised this property to the appointees under the will of his son he necessarily subjected it to the charge that the state might impose on the privilege accorded to the *son of making a will*

and that the charge is the same in character as if it had been laid on the inheritance of the estate of the son himself, that is, for the privilege of succeeding to the property under a will.

Orr vs. *Gilman*, 183 U. S. 278, 288.

"They argue that inheritance taxes have been sustained on the ground (*United States* vs. *Perkins*, 163 U. S. 625) that no one has the natural right to acquire property by will or descent, and if the state permits such acquisition, it may require the payment of a tax as a condition precedent to the right of *using* that *privilege*.

There is no natural right to create artificial and technical estates with limitations over, nor have the remaindermen any more right to succeed to the possession of property under such deeds than legatees and devisees under a will. *The privilege of acquiring property* by such an instrument is as much dependent upon the law as that of acquiring property by inheritance."

Keeney vs. *New York*, 222 U. S. 525, 533.

"The ground upon which this tax is imposed is, I repeat, the right of the state to regulate or, if it sees fit, to destroy inheritances. If it might have not appropriated the whole, it can not appropriate any part by the law before us. And I also repeat that it has no bearing upon the matter that by a different law the state might have derived an equal revenue from these donees in the form of a tax."

Chandler vs. *Kelsey*, 205 U. S. 466, 482. Dissenting opinion, Mr. Justice Holmes, with whom Mr. Justice Moody concurred.

Plaintiffs in error contend that the rights of heirs, legatees and devisees in California become vested immediately upon the death of the testator or intestate decedent. As to intestacy, this is undoubtedly correct, but in all events the vesting is subject to all claims against the estate and all liens created by the decedent or attaching to the estate by operation of law. Therefore the interests of the heirs, legatees or devisees are determined only at distribution, when it has been shown that the charges against the estate have been satisfied. And in the instant case, the rights of the residuary legatees, more particularly their interest or their quantum of estate, could only be determined after the payment of the federal estate tax and all other just, fixed charges on the property of decedent.

> "In this view of the provision of the statute under consideration it can not be held violative of the terms of the federal constitution, since the devisee or legatee of the estate affected by this provision does not become entitled to his portion of the property of the said estate until it has already been burdened with his inheritance tax and hence by no part of said scheme of taxation can he be held to be deprived of property without due process of law."
>
> *Estate of Watkinson,* 217 Pac. (Cal.) 1075.

The great weight of authority therefore holds that the right of inheritance, including the designation of heirs and the proportions which the several heirs

shall receive, as well as the rights of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature, as it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate or that the ancestor can divert his estate from the heir.

The nature of the tax is pointed out in *Walker* vs. *People,* 8 A. L. R. 855, "The succession and not the thing inherited is the subject of a succession tax."

Through a long list of decisions over a quarter of a century the Supreme Court of California without variance has held the California inheritance tax was a charge on the vehicle used to transfer or the exercise of the right to transfer the title at death.

> "The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."
>
> *Estate of Wilmerding,* 117 Cal. 281.

> "The legislature may place any condition or burden upon the right to inherit property."

Estate of Potter, 188 Cal. 55;
Estate of Watkinson, supra.

"In other words, the tax is imposed and is sustainable upon the theory that a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state."
Estate of Charlotte Bowditch, 189 Cal. 377.

Moneys appropriated by the United States to itself as estate taxes are not the first charge against an estate and their withdrawal is not prior to the attachment of the state inheritance tax lien.

It is apparent from the long list of authorities that the tax is on the privilege of transmission and there is in California no constitutional prohibition against the taxing of a civil right or privilege. It is fundamental that California could abolish the right of testamentary disposition, as well as that of inheritance, over all property within the state; take away the California legislation and the privilege now taxed by congress does not exist. Therefore, the State of California, having the right to say when and under what circumstances an estate shall pass, there is no transfer, and therefore nothing upon which the federal tax can operate, until the state lays down the rules and conditions of inheritance.

It is logical then to conclude that when the legislature imposes a tax on the right of inheritance, the state is asserting its ownership to a portion of the

property of the ancestor, title to which vests in the state at death. The legislature, having the power to impose a tax upon the passing of property from the dead to the living, had the exclusive power of determining the method by which the amount of the tax should be ascertained.

> "The federal power to tax on the occasion of transmission of property on death must be governed by the state's exclusive power of regulation of that subject, and its full execution."
>
> *McCulloch* vs. *Maryland,* 4 Wheat. 316, 4 L. ed. 579.

Both sovereigns can insist upon an exaction on the whole estate of a decedent for the privilege of its transfer. Their laws are of equal solemnity and attach to the state simultaneously. The federal government, however, can not prescribe rules of succession of estates or in any wise usurp any of these powers residing in the various states. When the State of California said that the federal estate tax should not be deducted in arriving at the clear market value of an estate, it prescribed a condition of succession which must be complied with before the succession laws of California are available to a beneficiary. The federal government can likewise in its power place burdens on the privilege of succession granted by the state, within well defined limits, however, but not broad and limitless as can the states.

> "IN OTHER WORDS, WE DEFINED THE NATURE OF THE TAX: WE DID NOT PRESCRIBE THE TIME OF ITS IMPOSITION.

TO HAVE DONE THE LATTER WOULD HAVE BEEN TO PRESCRIBE A RULE OF SUCCESSION OF ESTATES AND USURP A POWER WE DID NOT AND DO NOT POSSESS. THERE IS NOTHING, THEREFORE, IN THOSE CASES WHICH RESTRAINS THE POWER OF THE STATE AS TO THE TIME OF THE IMPOSITION OF THE TAX. IT MAY SELECT THE MOMENT OF DEATH, OR IT MAY EXERCISE ITS POWER DURING ANY OF THE TIME IT HOLDS THE PROPERTY FROM THE LEGATEE. 'IT IS NOT,' WE SAID IN THE PERKINS CASE, 'UNTIL IT HAS YIELDED ITS CONTRIBUTION TO THE STATE THAT IT BECOMES THE PROPERTY OF THE LEGATEE.' "

Cahen vs. *Brewster,* 203 U. S. 543, 551.

In bestowing this right California has justly attached some burden, one being that in cases of priority between the federal government and the sovereign state, the state granting the privilege shall stand on the same ground as the federal government.

In the dissenting opinion of Mr. Justice Holmes, with whom was Mr. Justice Moody, we find the following:

"A state succession tax stands on different grounds from a similar tax by the United States or a general state tax upon transfers. It is more unlimited in its possible extent, if not altogether unlimited, and therefore it is necessary that the boundaries of the power to levy such taxes should be accurately understood and defined.

I always have believed that a state inheritance tax was an exercise of the power of regulating the devolution of property, by inheritance or will upon the death of the owner,—a power which belongs to the states; and I have been fortified in my belief by the utterances of this court from the time of Chief Justice Taney to the present day. (Citing long list of cases.) *For that reason the power is more unlimited than the power of a state to tax transfers generally, or the power of the United States to levy an inheritance tax."*
Chandler vs. *Kelsey,* 205 U. S. 466, 479.

"Of course, any tax which is a lien would necessarily precede any other claim, whether by virtue of the taxing power or otherwise, which was not a prior lien. * * * Whatever may be the proper construction of this act, the Commissioner of Internal Revenue and the New York State Tax Commission have approved of sharing pro rata in the fund, where there is not sufficient to pay the taxes due to both. I am filing herein letters, or copies thereof, indicating their desire to take this position. It is evident that such a practical adjustment is much wiser than a contest between the two sovereignties in the imposition of statutory liens. I shall therefore not attempt to decide whether the state has under the particular statute in question a lien prior to the federal government, but shall order the state and federal taxes paid *pari passu."*
In re A. E. Fountain, Inc., 295 Fed. 874, 876.

"In New York the inheritance tax imposed by another state is not allowed as a deduction, and

this rule was impliedly affirmed by the Supreme Court of the United States, which dismissed the appeal of the executor."

Matter of W. H. Penfold, 216 N. Y. 171; 110 N. E. 499.

Gleason & Otis Text Book on Inheritance Taxation, 1922 Ed. p. 376.

We find in the dissenting opinion of Mr. Justice White, in *Snyder* vs. *Bettman,* 190 U. S. 1035, with whom concurred Mr. Chief Justice Fuller and Mr. Justice Peckham, an axiomatic legal principle, not inconsistent with the main opinion in the case, which is the settled rule concerning the regulation of succession and the priority of attachment of the federal and state inheritance tax liens.

"The United States not possessing, as the states do, the right to regulate successions, when the United States calls into play its taxing power over the subject of the passage or receipt of property by death, the extent of its authority is to be measured solely by the scope of the taxing power conferred by the constitution."

To the same effect is the New York rule.

"Congress may impose an excise tax, such as the federal estate tax, and the state may impose a like local tax, but congress can not abridge the power of the state to tax a privilege the state confers by act of its legislature. Such a construction will not be given unless the proper construction of the local act imperatively demands it."

Re Sherman, 222 N. Y. 540, affirmed 179 App. Div. 497.

"These opinions should have persuasive force with us only in the event that we find a like legislative intent in the Rhode Island statute. We say the laws of Rhode Island because it is the law of the state and not the federal law which limits and regulates the transfer of a decedent's property."

Hazard vs. *Bliss,* 113 Atl. (R. I.) 469.

"In determining this question (Is the federal estate tax a proper deduction?) we begin with the fundamental principle that the rule of transmission and devolution of property are exclusively within the power and control of the individual sovereign state.

If it sees fit, it may ordain that no one shall inherit the estate of a deceased person, and that the entirety shall inure to the public fisc, in which event the national government would be powerless to impose any tax or burden thereon, for such an imposition would be an encroachment upon state sovereignty, not authorized by the powers delegated under the federal constitution."

Succession of Gheens, 88 So. (La.) 253.

"The nature of collateral inheritance taxes has been the subject of many decisions, both federal and state. The general principle of such of them as are termed legacy and succession taxes, when not otherwise affected by statutory provisions, is that the tax is upon the legacy before it reaches the hands of the legatee, whose property it becomes only after it has yielded its contribution to the state and after it has suffered a diminution

to the amount of the tax in return for the legislature's assent to the bequest. (Citing cases.) But in looking for the nature of the collateral inheritance tax under consideration, it is not necessary to seek light from statutes and decisions of other states, for the act shows its nature by its own clear expressions aided by interpretations repeatedly made by the Supreme Court of Pennsylvania.

In using the words 'all estates' shall be subject to the tax, the Supreme Court of Pennsylvania has held that the legislature contemplated the property of the decedent, not the interest therein of the legatee or distributee, *Del Buto's Estate,* 45 Leg. Int. 474; *Howell's Estate,* 147 Pa. 164, 23 Atl. 403; that the tax is imposed only once, and that is before the legacy has reached the legatee and before it has become his property; that it must be retained and paid by the executor or administrator who has the decedent's property in charge; that which the legatee really receives is not taxed at all; his property is that which is left after the tax has been taken off."

Lederer vs. *Northern Trust Co.,* 262 Fed. 52, 54, 55.

We have no quarrel with the proposition that the federal government, with its delegated powers from the sovereign states, may impose certain conditions upon the succession to property, but we insist that the right of the federal government to foreclose the sovereign state by the prior attachment of their tax to an estate can only be maintained by an express constitutional grant, which delegation has never been made by the states.

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

Tenth amendment to the constitution of the United States.

The State of California, by virtue of its paramount power and authority to grant succession to property, seizes upon a part of the estate and appropriates that part to its use immediately upon death. The right of the state comes into existence before, and is independent of, the receipt of the property by the legatee; his legacy is not taxed at all, the property he receives is the amount left after the tax has been satisfied.

Opposing counsel is in error in urging that the federal tax has a priority and is paramount, particularly when the state in its laws has expressly designated the contrary. Any attempt of the federal government to have its tax supersede the state tax and to subject an estate to a federal tax lien first and to the exclusion of a state inheritance tax charge would indeed be an unlawful interference with the laws of descent and distribution and an invasion of state sovereignty. Where under the constitution the right to grant a privilege is concurrent in the federal and state government, the rule may be otherwise. The foundation of and authority to levy the federal estate tax is a state-given privilege, therefore the federal tax is limited by any condition or reservation found in the law creating the privilege.

Our tax is not imposed upon the exercise of the privilege to receive property. The state-granted right to Helen Pierce Watkinson to make a will by which her estate could be transmitted as she wished, is the privilege upon which the charge is made. The receipt of the property by the beneficiary is a mere incident and only naturally follows.

No more can be said for the federal estate tax than that it is of equal solemnity with the state inheritance tax. In the event of the loss or destruction of an estate's assets during administration, thereby leaving in the hands of the executor insufficient funds to meet both taxes computed as of death, would the federal tax be first satisfied and then the state tax be satisfied only to the extent of the remaining property? Or would not the state by reason of its control of succession have the prior lien? The most favorable position that the federal government could expect would be a proration of the taxes, a plan judicially sanctioned in case of an insolvent debtor owing taxes to a state, a county and a city.

The section is not discriminatory for every class receives identical treatment under the act and the amount of the tax is measured only by factors legitimately included in the taxing statute.

Plaintiffs in error point out in their brief at page 38, by means of certain illustrations, the inequalities which might occur under the California Inheritance Tax Act. They do not, however, urge that these

inequalities could exist in the estate of the within decedent, as in the instant estate the residue thereof devised by testator to eight persons amounts to upward of $1,000,000 while the total tax burdens on the estate to the State of California and the federal government aggregate approximately $375,000. It is true that a residuary legatee might inherit a liability, should he fail to renounce the legacy, by reason of inheritance tax charges on an estate, but this could not be done without the express and intentional declarations of the testator. In case of an intestacy this could not happen. It can not seriously be urged that there is any inequality in the treatment by California of residuary legatees, as we treat them all similarly situated in the same manner.

> "There are four classes created, and manifestly there is equality between the members of each class. Inequality is only found by comparing the members of one class with those of another. It is illustrated by appellant as follows: One who receives a legacy of $10,000 pays 3 per cent, or $300, thus receiving $9,700 net; while one receiving a legacy of $10,001 pays 4 per cent on the whole amount, or $400.04, thus receiving $9,600.96, or $99.04 less than the one whose legacy was actually one dollar less valuable. This method is applied throughout the grades."
>
> *Magoun* vs. *Illinois Trust & Savings Bank,* 170 U. S. 283, 299.

> "The inequalities charged upon the statute, if there is an intestacy, are all inequalities in the amounts that beneficiaries might receive in case

of estates of different values, or different proportions for the real and personal estate, or of different numbers of recipients; or if there is a will affecting legatees. *As to the inequalities in case of a will, they will be taken to be contemplated by the testator. He knows the law and the consequences of the disposition that he makes.* As to intestate successors, the tax is not imposed upon them but precedes them, and the fact that they may receive less or different sums because of the statutes does not concern the United States."

New York Trust Company vs. *Eisner,* 256 U. S. 345, 349.

The section does not violate the federal constitutional provision guaranteeing all persons equal protection of the laws.

We have weighed the contents of this contention and are unable to find anything of value. The California Inheritance Tax Law, in its operation and effect, affords to all who come under its jurisdiction equal rights. All estates are granted the same privileges and have the same conditions imposed upon them under the act, and in taxing estates which are of sufficient size to be subjected under the federal act to the payment of a tax, we deny to all estates, where the decedent died between July 27, 1917, and August 2, 1921, a deduction on account of the federal tax.

The legislature has determined that it is in the public interest that this tax shall be imposed upon the inheritances which exceed five hundred dollars in

value. There is no constitutional requirement that it shall be imposed upon every inheritance, and the judgment of the legislature in that respect is not open to review by the courts.

Estate of Wilmerding, 117 Cal. 281, 287.

Mr. Justice Brewer in his dissenting opinion in the case of *Magoun* vs. *Illinois Trust & Savings Bank,* at page 301, used this significant language:

> "Of course absolute equality is not attainable, and the fact that a law, whether tax law or other, works inequality in its actual operation, does not prove its unconstitutionality."

Many states exempt from inheritance taxes only such property bequeathed for charitable or educational purposes as shall be utilized within its borders. Such enactments are not unreasonable or arbitrary classifications. Also the right of the legislature to impose the tax includes the right to select the property upon which it shall be imposed. For example, in the instant case the legislature could have raised the rates of tax to obtain added needed revenue, or reduced the exemption, or denied deductions, any one of which would have obtained the same result.

Further, at page 300, Mr. Justice McKenna, in *Magoun* vs. *Illinois Trust & Sevings Bank,* referring to the Illinois inheritance tax act, said:

> "But neither case can be said to be contrary to the rule of equality of the fourteenth amendment. That rule does not require, as we have seen, exact equality of taxation. It only requires that the

law imposing it shall operate on all alike under the same circumstances. The tax is not on money; *it is on the right to inherit;* and hence a condition of inheritance, *and it may be graded according to the value of that inheritance.* The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' * * *

This court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation."

And he said in another case:

"It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity."

For the State of California to do the common thing and disallow as a deduction taxes paid by reason of the federal estate tax act, can not be said to be capricious or an unjust or unequal burden on inheritance, nor is the selection of the estates upon which this attempted burden must rest an arbitrary or unreasonable classification. In this connection Mr. Justice McKenna said, at page 294, in the case of *Magoun* vs. *Illinois Trust & Savings Bank*:

"In other words, the state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of

course. Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

The section does not violate the inhibition of the federal constitution against depriving persons of property without due process of law, nor does it indirectly attempt to subject to state taxation one of the federal revenues, nor does it interfere with the power of congress to levy and collect taxes.

The constitutionality of inheritance taxation has been declared not only by this court in several instances, but also by the highest courts of many of the states. The principles upon which this tax is based are explained in *United States* vs. *Perkins,* 163 U. S. 625, 628, and *In re Wilmerding,* 117 Cal. 281.

The bases for sustaining the tax are indicated by Mr. Justice McKenna in the court's opinion, *Magoun* vs. *Illinois Trust & Savings Bank.*

"The effect of the legislation under consideration has been determined by this court, and the Court of Errors, in a series of cases in which its legality was attacked from various aspects, with the result of sustaining it as a legislative effort to impose a succession as contradistinguished from a property tax. It is further deductible from these decisions that this legislative power, when not exerted in an arbitrary or capricious manner, or in disregard of fundamental rights, does not contravene any inhibition intended to

secure equality of right, contained in the provisions of the federal or state constitutions."
Maxwell vs. *Edwards,* 99 Atl. 138.

Under our constitutional system both the national and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the power of government of the other, for if it did, there would practically be an end to the dual system of government which the constitution established.

It can not be said that the State of California is taxing property of the United States. The United States is not a party to this proceeding and we are not sure that such a collateral contention could be maintained.

"This, therefore, is not a tax upon the property itself, but is merely the price exacted by the state for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution. We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

United States vs. *Perkins,* 163 U. S. 628, 629, 630;

Campbell vs. *California,* 200 U. S. 87, 94.

The contention that our failure to deduct the federal tax is a taking of property contrary to the provisions of the fourteenth amendment to the federal constitution, and compels the payment of a tax on property which never belonged to the distributee or heir, is answered by the case of *Maxwell* vs. *Edwards,* 99 Atl. 138.

> "Nothing in the fourteenth amendment imposes any ironclad rule upon the states with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based upon arbitrary distinctions.
>
> The never-ending aim of popular government and the age-long dream of the political economists have been the evolution of a golden rule productive of equality of taxation.
>
> It is a matter of common experience that absolute equality in the imposition of a tax is not attainable."

To a similar effect this honorable court said:

> "The validity of the tax must be determined by the laws of New York. The *fourteenth amendment* does not diminish the taxing power of the state, but only requires that in its exercise the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not

deprive the state of the power to select the *subjects of taxation.* But it does not follow that because it can tax any transfer (*Hatch vs. Reardon,* 204 U. S. 152, 159), that it must tax all transfers, or *that all must be treated alike.*"

Keeney vs. *New York,* 222 U. S. 525, 535.

Mr. Chief Justice Fuller, in *Giozza* vs. *Tiernan,* 148 U. S. 657, said:

"The fourteenth amendment was not intended to compel the state to adopt an iron rule of equal taxation. The range of the state's power was expressed by Mr. Justice Bradley, as follows: 'It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; *it may allow deductions for indebtedness, or not allow them.* All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution.' "

And so Mr. Justice Miller, speaking for the court in *Davidson* vs. *New Orleans,* 96 U. S. 97, said:

"The federal constitution imposes no restraints on the state in regard to unequal taxation."

An examination of the brief of plaintiffs in error does not disclose a single case wherein a constitutional attack on an inheritance tax statute by reason of the failure to determine the federal tax or a tax due another sovereign as a deduction is sustained. The question of deducting the federal estate tax is not a new one. It has been raised, as we have pointed out, in many state courts, and always has been dealt with as a problem of construing the particular statute. The state courts have uniformly brushed aside the constitutional objections. When deduction of the federal tax has been allowed it has been on the ground that the legislature intended it to be allowed, and when not allowed, as in the instant case, it has been because the statute under consideration as construed by the court did not provide for such allowance.

> "It is clear that the act of 1919 did not impose a tax on property, but requires payment to be made from the estate of a decedent for the right of succession or the privilege of receiving at death the property possessed by a decedent. * * * This is plain and unambiguous language, holding that the federal tax should not be deducted in determining the amount of the inheritance tax, and, since there is no constitutional provision forbidding this, we must enforce it as written."
>
> *Kirkpatrick's Estate,* 275 Pa. 271.

The section does not violate the state constitutional inhibition against passing of local or special laws changing the law of descent or succession.

An examination of the act itself indicates the weakness of this attack. Nowhere in the provision do we find the least scintilla of an intimation by word, legislative intent or otherwise, that the same is to be considered a statute of descent or succession. Ordinarily, if we are seeking out the statutes of descent and distribution, we confine ourselves to an examination of that portion of the Civil Code dealing with this particular subject, commonly known and designated as title VII, part IV, of the Civil Code.

> "Neither the heirs, legatees, or creditors pay the penalty, but the estate, hence, it is not an exaction laid upon persons innocent of the failure to pay this tax and does not deprive them of their property for they never owned the part so paid any more than they could be said to own the part which went to pay accrued taxes. The plaintiffs say this penalty is confiscation of property, but we see in it nothing more than a reasonable regulation to secure the payment of the public taxes."
> *Bankers' Trust Co.* vs. *State*, 114 Atl. 108.

> "As to the several sections of the state constitution referred to in the foregoing objections, it must be held that these taxes upon the privilege of testamentary transmission and succession, since they are not property taxes can not be held subject to the limitations placed by the constitution upon property taxes."

Estate of Watkinson, 217 Pac. 1073;
In re Frick's Estate, 121 Atl. (Pa.) 35, 39;
In re Sanford's Estate, 175 N. W. 506;
In re Kirkpatrick's Estate, 275 Pa. 271.

A tax on the privilege of transmitting property has some features of a tax regulating testamentary disposition. Today in California we find a regulatory tax on nearly every avenue of endeavor, and the constitutionality of such a levy has been sustained innumerable times by our highest court.

> "The power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owner, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated."
>
> *United States* vs. *Fox,* 94 U. S. 315, 320.

Conclusion.

Section 203 of the revenue act of September 8, 1916, provided that, for the purpose of the federal estate tax, the value of the net estate should be determined by making certain deductions, including such other charges against the estate as are allowed by the laws of the jurisdiction. By reason of this provision, coupled with the express declaration in the

1917 California "Inheritance Tax Act" exempting one-half of the community property which goes to the widow on the death of the husband we find the court in the case of *Wardell* vs. *Blum,* 276 Fed. 226, 227, concluding:

> "How is that interest to be determined? Manifestly we think, by the law of the state where the property is situate. In the present instance the law of that state is declared by the statute enacted in 1917, providing that so far as state inheritance taxes are concerned, the wife of a decedent acquires upon his death, one-half of the community property, * * *."

Also in this connection in the opinion of the Honorable Harlan F. Stone, Attorney General, to the Honorable, The Secretary of the Treasury, dated October 9, 1924, on the question of the recognition of a vested community interest in a California wife or widow for federal estate tax purposes said at page 5:

> "It may be conceded that questions of title to property and the incidents thereof, questions of devise, inheritance and succession are questions primarily of state law, and that when those questions arise in a federal court, the law of the state should be followed. * * *
>
> * * * In passing upon questions of state law of this type, it is the duty of the federal court to refer to the statutes and decisions of the state for the purpose of ascertaining what the law of the state is, and ordinarily federal courts follow and apply the state law as defined by the judicial decisions of the state courts."

At page 14 of the opinion we find:

> "* * * a study of the situation * * * and considering those principles which must govern the incidence of a federal taxing statute upon a subject matter which is the creation of state law."

Defendant in error, therefore contends that the power of the federal government to collect its estate tax must be confined to the regulations prescribed for the privilege of succession by the states. The entrance of the federal government into this taxing field, enjoyed for more than thirty years by the State of California, can not diminish or destroy the powers and rights heretofore enjoyed by this state. Under our dual system of government, in instances of this character, the jurisdiction of the federal government not being concurrent with that of the state, the paramount rights can not be with the federal government.

We have heretofore made reference to the case of *Snyder* vs. *Bettman*, which is the converse of *U. S.* vs. *Perkins* and *Plummer* vs. *Coler*. In the *Perkins* case a tax was validated on a bequest to the United States, while in the *Plummer* case a bequest consisting wholly of United States bonds was subjected to tax. The case of *Snyder* vs. *Bettman* validated a tax upon a bequest to a municipality and the authorities hold that municipal bonds stand in no different position from money payable to a state and the estate tax being the antithesis of a direct tax, the transfer was taxable.

In *New York Trust Company* vs. *Eisner*, question was raised to the federal estate tax on the ground

that it was a direct tax and, therefore, invalid because not apportioned, and on the further ground that if it was an indirect or transfer tax it was cast upon the transfer while the latter was being effectuated by the state, and was consequently an interference by the federal government with state processes. Those questioning its validity laid special emphasis on the fact that the privilege of transfer is created by state laws exclusively, which was not doubted. If a tax by the federal government on a privilege created exclusively by a state, such tax accruing at the instant of transfer, is not an unconstitutional interference with state processes, how can a similar tax imposed by the jurisdiction which itself creates the privilege be an unconstitutional interference with federal processes?

Sacramento, California,
January 31, 1925.

Respectfully submitted.

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the residuary estate were equal in each instance. *Held* consistent with the due process and equal protection clauses of the Fourteenth Amendment. P. 140.

2. There are two elements in the transfer of a decedent's estate, exercise of the legal power to transmit at death and privilege of succession, and both may be made the basis of classification in a single state taxing statute, so that the amount of tax which a legatee shall pay may be made to depend both on the total net amount of the decedent's estate subject to the jurisdiction of the State and passing under its inheritance and testamentary laws, and the amount of the legacy to which the legatee succeeds under those laws. P. 144.

191 Cal. 591, affirmed.

ERROR to a judgment of the Supreme Court of California sustaining, on review, a judgment of the Superior Court confirming an assessment of inheritance taxes.

Mr. Carey Van Fleet, with whom *Messrs. Joseph G. De Forest, Sidney M. Ehrman, Maurice E. Harrison, William M. Madden, Lloyd M. Robbins* and *Luther Elkins* were on the brief, for plaintiffs in error.

Mr. Ralph W. Smith, Inheritance Tax Attorney for California, with whom *Messrs. Wesley E. Marten, Dion R. Holm, Arthur W. Brouillett, Erwin P. Werner* and *Adrian C. Stanton* were on the brief, for defendant in error.

Messrs. Martin Saxe, Samuel P. Goldman, Charles R. McSparren and *William F. Unger,* filed a brief as *amici curiae* by special leave of court.

MR. JUSTICE STONE delivered the opinion of the Court.

This case is here on a writ of error to the Supreme Court of California to review the determination of that court upholding the constitutionality of the Inheritance Tax Act of the State of California enacted in 1917, particularly Subdivision 10 of § 2 of the Act, which prescribes the

method of determining the market value of the property transferred, for the purpose of fixing the amount of the tax. Subdivision 10 of § 2 reads as follows:

"In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States."

The decedent left a gross estate exceeding $1,800,000, on which the federal Estate Tax amounted to the sum of $128,730.08. In fixing the amount of inheritance tax due to the State of California upon the residuary legacies, the state Tax Appraiser, acting pursuant to the provisions of Subdivision 10 of § 2, did not deduct the amount of federal Estate Tax. In consequence the total amount of state tax assessed upon the residuary estate was $26,205.75 greater than it would have been had the federal Estate Tax been deducted from the residuum of the estate before fixing the amount of the state tax. The Superior Court of San Francisco County having jurisdiction in the premises confirmed the tax, and the Supreme Court of California, on writ of error, held that the tax was in accordance with the laws and the constitution of California and was not a denial of due process or equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States. *Stebbins* v. *Riley*, 191 Cal. 591.

It is urged here that the California Inheritance Tax Act of 1917 is a succession tax; that the provision of the taxing law requiring that there shall be no deduction of the federal tax in fixing the fair value of the legacy on which the state tax is levied is an arbitrary discrimination bearing no relation either to the persons succeeding to the decedent's estate or to the amount which the taxpayer takes by succession, and that it is accordingly a taking of property without due process of law, and, because of the inequalities in the amount of the tax result-

ing from the application of the taxing statute to successions, there is a denial of the equal protection of the laws. On the other hand, it is urged that the so-called "right" of acquiring property by devise or descent, is not a property right but a mere privilege, the creature of state law, and the authority which confers it may impose conditions upon its exercise; that in consequence the State may tax the privilege, discriminating not only between the status of those who inherit and the amounts which they thus acquire, but discriminating likewise between inheritances or legacies of like amount which are transmitted from estates of varying size, if the discrimination is based upon or bears some reasonable relation to the size of the whole estate transmitted on the death of the decedent. In presenting this aspect of the case, it was argued by the appellant, on the one hand, that there was a natural right to inheritance entitled to the protection of the due process clause of the Fourteenth Amendment, and by the appellee, on the other, that the legislative authority could deny wholly the privilege of inheritance and consequently could place unlimited burdens upon it.

There is much in judicial opinion to suggest that a State may impose any condition it chooses on the privilege of taking property by will or descent, or, indeed, that it may abolish that privilege altogether, and, for this reason, that a State is untrammeled in its power to tax the privilege. See *Mager* v. *Grima*, 8 How. 490; *United States* v. *Perkins*, 163 U. S. 625; *Knowlton* v. *Moore*, 178 U. S. 41, at page 55; *Campbell* v. *California*, 200 U. S. 87, at page 94.

But we do not find it necessary to discuss the issue thus raised, for it has been repeatedly held by this Court that the power of testamentary disposition and the privilege of inheritance are subject to state taxation and state regulation and that regulatory taxing provisions, even though they produce inequalities in taxation, do not effect an unconstitutional taking of property, unless, as

was said in *Dane* v. *Jackson*, 256 U. S. 589, 599, the taxing statute "results in such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—'to spoilation under the guise of exerting the power of taxing.'" Citing *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S. 232, 237; *Henderson Bridge Co.* v. *Henderson City*, 173 U. S. 592, 615; *Wagner* v. *Baltimore*, 239 U. S. 207, 220.

The subject matter of an inheritance taxing statute may be either the transmission, or the exercise of the legal power of transmission, of property by will or descent, (*United States* v. *Perkins*, 163 U. S. 625, 629; *Plummer* v. *Coler*, 178 U. S. 115, 125; *New York Trust Co.* v. *Eisner*, 256 U. S. 345), or it may be the legal privilege of taking property by devise or descent (*Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *Knowlton* v. *Moore*, 178 U. S. 41; *Campbell* v. *California*, 200 U. S. 87.)

Even assuming that a State does not, under the Constitution of the United States, possess unlimited power to curtail the power of disposition of property at death or the privilege of receiving it by way of inheritance, there is nevertheless no constitutional guarantee of equality of taxation. The power of the States to discriminate in fixing the amount and incidence of taxation upon inheritances is undoubted. A State may levy a tax upon the power to dispose of property by will, graduated by the size of the legacy, and it may grant exemptions. See *Plummer* v. *Coler, supra; Keeney* v. *Comptroller of N. Y.*, 222 U. S. 525. It may discriminate between property which has not borne its full share of taxation in the testator's lifetime and other property passing to the same class of transferees. *Watson* v. *State Comptroller*, 254 U. S. 122. It may fix a graduated succession tax, even though the amount of tax assessed does not vary in pro-

portion to the amount of the legacy received by persons of the same class. *Magoun* v. *Illinois Trust & Savings Bank, supra.* It may fix a succession tax which imposes a tax upon inheritances to brothers and sisters and not on those to daughters-in-law and sons-in-law. *Campbell* v. *California, supra.*

The guarantee of the Fourteenth Amendment of the equal protection of the laws is not a guarantee of equality of operation or application of state legislation upon all citizens of a State. As was said in *Magoun* v. *Illinois Trust & Savings Bank, supra,* at page 293:

"It only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. . . . In other words, the State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion."

The taxing statute may, therefore, make a classification for purposes of fixing the amount or incidence of the tax, provided only that all persons subjected to such legislation within the classification are treated with equality and provided further that the classification itself be rested upon some ground of difference having a fair and substantial relation to the object of the legislation. *Magoun* v. *Illinois Trust & Savings Bank, supra; F. S. Royster Guano Co.* v. *Virginia,* 253 U. S. 412.

"It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rate of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only,

and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution." *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S. 232, at p. 237.

It is not necessary that the basis of classification should be deducible from the nature of the thing classified. It is enough that the classification is reasonably founded in the "purposes and policies of taxation." *Watson* v. *Comptroller*, 254 U. S. 122. It is not open to objection unless it precludes the assumption that the classification was made in the exercise of legislative judgment and discretion. *Campbell* v. *California, supra.*

Unquestionably the operation of Subdivision 10 of § 2 of the California Inheritance Act of 1917 now under consideration may result in inequalities in the incidence of taxation. The requirement that the federal Estate Tax shall not be deducted in fixing the state Inheritance Tax imposes a much larger proportionate tax on the succession to a residuum of a large estate than a smaller estate, although the residuary estate and the residuary legacy be equal in each instance.

The plaintiffs in error base their argument that this is a denial of the equal protection of the laws on the assumption that the California Inheritance Tax must be dealt with exclusively as a tax upon succession, and that, since the privilege of receiving residuary legacies of like amounts by persons of like relationship is subjected to unequal taxation, the inequality depending upon the size of the estate from which the legacy is received, there is an arbitrary discrimination and a denial of the equal protection of the laws. It is true that the inheritance tax law of California in force before the adoption of the law of 1917 repealing it, was held by the Supreme Court of

California to be a succession tax. *Estate of Miller*, 184 Cal. 674. That statute contained no express provision prohibiting the deduction of federal estate taxes before fixing the state tax on legacies, and that court held, adopting the principle of construction applied in *Knowlton* v. *Moore, supra*, that the true effect of the California Inheritance Tax Act, being that of a tax on succession, the federal tax must be deducted in order to determine the amount on which the state tax should be based. It is true, too, that the California Inheritance Tax Act of 1917 provides for a graduated tax dependent upon the size of the legacy and discriminates between different classes of persons receiving the legacy, provisions which are characteristic of laws levying the tax upon successions. But § 2 of that Act expressly imposes the tax "upon the *transfer* of any property" of the character described in the Act, and Subdivision 3 of § 1 of the Act provides that the word "transfer" as used in this Act shall be "taken to include the passing of any property or any interest therein" in the manner provided in the Act. Subdivision 10 of § 2, which is new, in its practical operation, makes the amount of the tax dependent to some extent upon the amount of the decedent's estate which passes, since the federal Estate Tax which under that provision may not be deducted in fixing the state tax is assessed upon the whole estate. To that extent the statute establishes a classification based on the amount of the estate passing under the power of disposition at the time of death, as well as the classification, based upon the amount of the legacy received, contained in other provisions of the taxing law.

There are two elements in every transfer of a decedent's estate; the one is the exercise of the legal power to transmit at death; the other is the privilege of succession. Each, as we have seen, is the subject of taxation. The incidents which attach to each, as we have observed,

may be made the basis of classification. We can perceive no reason why both may not be made the basis of classification in a single taxing statute, so that the amount of tax which the legatee shall pay may be made to depend both on the total net amount of the decedent's estate subject to the jurisdiction of the State and passing under its inheritance and testamentary laws and the amount of the legacy to which the legatee succeeds under those laws. Such a classification is not, on its face, unreasonable. The discrimination is one which bears a substantial relationship to the exercise of the power of disposition by the testator. It is one of the elements in the transfer which is made the subject of taxation. The adoption of the discrimination does not preclude the assumption that the legislature, in enacting the taxing statute, did not act arbitrarily or without the exercise of judgment or discretion which rightfully belong to it, and we can find in it no basis for holding the statute unconstitutional.

It is urged by appellants that the decision of this Court in *Knowlton* v. *Moore, supra,* is in conflict with the conclusion here reached. We do not so read the opinion in that case. It was there held that an act of Congress fixing a graduated tax upon legacies was within the taxing power of the United States. In construing that law, however, the question arose whether the progressive rate of tax which it imposed upon legacies or distributive shares of decedent's estate, should be measured, not separately by the amount of each legacy or distributive share, but by the total amount of the estate transmitted. This Court held that inasmuch as the statute laid down no express rule determining the question, it would adopt the construction which produced the least inconvenience and inequality to taxpayers, and that the tax should therefore be measured and apportioned according to the amount of each individual legacy rather than the amount of the whole estate. The question was one of construction only

and not of constitutional power. Here the construction of the taxing act is not open to question. Its meaning and application have been determined by the Supreme Court of California and by its determination we are bound. We hold that in enacting it the legislature did not exceed its constitutional power.

Affirmed.

STEBBINS AND HURLEY, AS EXECUTRIX AND EXECUTOR OF THE WILL OF WATKINSON, DECEASED *v.* RILEY, CONTROLLER OF THE STATE OF CALIFORNIA.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 227. Argued March 9, 1925.—Decided April 13, 1925.

1. The California Inheritance Tax Law of 1917, § 2, sub-div. 10, by providing that in determining the market value of the property transferred, for the purpose of fixing the amount of tax, no deduction should be made of the Federal Estate Tax, (assessed upon the whole estate,) resulted in a much larger proportionate tax on the succession to the residuum of an estate when the estate was large than when it was small, though the residuary bequest and